Subject *Page*

49. Directors and Officers of Holding Defendants 336
50. Operating Organization of Operating Subsidiary Companies 338
51. Initial Organization of Operating Companies 341
52. Roster of Officers and Directors of Operating Companies 342
53. Relations of Holding-Operating Defendants to Their Subsidiaries 343

Article XIII. Ebasco Services Incorporated 352

54. Rendition of Services by Bond and Share Prior to November 25, 1935.. 352
55. Incorporation of Ebasco Services Incorporated 352
56. Cancellation of Service Contracts with Holding Defendants 353
57. Transfer of Stock in Other Corporations to Ebasco 354
58. Transfer of Service and Other Contracts to Ebasco 355
59. Board of Directors 357
60. Officers 357
61. Qualification of Ebasco as a Foreign Corporation 358
62. Performance of Services by Ebasco 358
63. Separation of Business between Ebasco and Bond and Share 358
64. Transfer of Service Personnel to Ebasco 359
65. Preliminary Statements with Respect to Services 360
66. General Description of Services Rendered to the Serviced Operating Companies 362

Subject *Page*

67. Accounting Services 366
68. General Engineering Services 367
69. Purchasing Services 370
70. Services Rendered by General Department 373
71. Budget Services 373
72. Insurance Services 374
73. Statistical Services 375
74. Tax Services 377
75. Rate Services 378
76. Sales Services 379
77. Secretarial Services 382
78. Treasury Services 382
79. Corporate Services 384
80. Special Engineering and Construction Services of Phoenix Engineering Corporation 385
81. Compensation, Income and Expenses of Ebasco 390

Article XIV. History of Bond and Share Service Organization and Description of Services Rendered 393

82. Origin and History of Service Arrangements 393
83. Services Formerly Rendered by Bond and Share 401
84. Reports Formerly Made by Serviced Companies to Bond and Share and Now Made to Ebasco 405
85. Bibliography of General Reports and Studies 410
85A. Engineering Studies and Reports... 411
86. Exhibits Relating to Purchasing Services 411

Subject *Page*

87. Exhibit Relating to Construction Services 413
88. Exhibits Illustrative of Services to Particular Companies 413
89. Income From Performance of Services by Bond and Share 414

Article XV. Financial Services Rendered By Bond and Share To Serviced Companies 415

90. General Statement 415
91. Formulation of Financial Programs 418
92. Bonds, Debentures and Preferred Stock Sold Through Investment Bankers 421
93. Preferred Stock Sales to Customers of Operating Companies 424
94. Listing of Securities on Stock Exchanges 426
95. Personnel of Bond and Share Securities Department 427

Article XVI. American Gas 428

96. Origin 428
97. Subsequent Acquisitions of Utility Properties 430
98. Physical Integration of Properties 432
99. Extent of System and Service 433
100. Relations of American Gas to Bond and Share 433
101. General Description of Business of American Gas 436
102. Relations of American Gas to its Subsidiaries 437

Subject *Page*

103. Relation of Holding-Operating Companies in the American Gas System to their Subsidiaries 438

Article XVII. Services Rendered to Subsidiaries of American Gas 443

104. General Statement 443
105. Administrative Department 445
106. Legal Department 445
107. Accounting and Auditing Departments 447
108. Stock and Dividend Department .. 449
109. Statistical Department 450
110. Purchasing Department 450
111. Commercial Department 454
112. Appraisal and Insurance Department 456
113. Engineering Department 457
114. Methods of Calculating Charges for Services 459
115. Bibliography of General Reports and Studies 461
116. Financing of American Gas and Its Subsidiaries 461
117. Income from Performance of Services by American Gas 467
118. Personnel of American Gas 467

Article XVIII. General Description of Physical Operation of Electric Utility Companies 468

119. Production, Transmission and Distribution 468
120. System Capacity Requirements 471
121. Synchronous System Operation ... 472
122. Interconnected Systems 474

Subject *Page*

123. Tracing Energy in System or Power Pool Operation 475
124. Historical Development of Systems and Interconnections 476
125. Location of Generating Facilities .. 477
126. Long Distance Transmission 479
127. Reasons for and Relative Significance of Interconnection within and between Systems 480
128. Data as to National Production, Consumption and Interstate Movements 483
129. State Regulation of Electric and Gas Utilities 487

Article XIX. Description of Electric Operations of Subsidiaries of Holding Defendants 489

130. Preliminary Statement 489
131. Pacific Power & Light Company (Oregon and Washington) and its subsidiary, Inland Power & Light Company (Oregon and Washington), Northwestern Electric Company (Oregon and Washington), The Washington Water Power Company (Washington and Idaho) and its subsidiary, Chelan Electric Company (Washington and Idaho) 490
132. The Montana Power Company (Montana and Idaho) 504
133. Minnesota Power & Light Company (Minnesota), Northern Power Company (Wisconsin), Superior Water, Light and Power Company (Wisconsin) 508

Subject	Page
134. Nebraska Power Company (Nebraska), Citizens Power & Light Company (Iowa)	511
135. Kansas Gas and Electric Company (Kansas)	513
136. Florida Power & Light Company (Florida)	515
137. Central Arizona Light and Power Company (Arizona)	516
138. Texas Electric Service Company (Texas)	517
139. Texas Power & Light Company (Texas)	518
140. Texas Public Utilities Corporation (Texas)	520
141. New Mexico Electric Service Company (New Mexico)	521
142. Dallas Power & Light Company (Texas)	522
143. Utah Power & Light Company (Utah, Idaho and Wyoming) and its two Subsidiaries, The Western Colorado Power Company (Colorado) and Bountiful Light and Power Company (Utah); and Idaho Power Company (Idaho, Oregon and Nevada)	523
144. Arkansas Power & Light Company (Arkansas), Louisiana Power & Light Company (Louisiana), Mississippi Power & Light Company (Mississippi)	535
145. New Orleans Public Service Inc. (Louisiana)	550

Subject *Page*

146. Memphis Power & Light Company (Tennessee), West Tennessee Power & Light Company (Tennessee) 552
147. Houston Lighting & Power Company (Texas) 555
148. Birmingham Electric Company (Alabama) 557
149. Carolina Power & Light Company (North Carolina and South Carolina), Tennessee Public Service Company (Tennessee), Roanoke River Power Company (Virginia), Holston River Electric Company (Tennessee) 558
150. Pennsylvania Power & Light Company and Subsidiaries (Pennsylvania) 570
151. The Ohio Power Company (Ohio and a plant in W. Va.), Wheeling Electric Company (W. Va. and Ohio), Indiana & Michigan Electric Company (Ind. and Mich.), Indiana General Service Company (Ind.), Southern Ohio Public Service Company (Ohio), Kanawha Valley Power Company (W. Va.), Appalachian Electric Power Company and its two wholly owned subsidiaries (Va., W. Va. and Tenn.), Kentucky and West Virginia Power Company, Inc. (Ky.) and Kingsport Utilities, Incorporated (Tenn.) 576
152. The Scranton Electric Company (Pennsylvania) 605
153. Atlantic City Electric Company (New Jersey) 608

Subject *Page*

Article XX. General Description of Physical Operation of Gas Properties 611

154. Definitions 611
155. Production, Transportation and Distribution 611
156. Field Use of Natural Gas 613
157. Transportation of Natural Gas..... 614
158. Movement Across State Boundaries 614
159. Pressure Regulation 617
160. Distribution 618
161. Interconnections; Transportation for Account of Others 618
162. Relation to Electric Service 619

Article XXI. Properties and Physical Operations of the Gas Companies in The Systems of The Holding Defendants 620

163. General Statement 620
164. United Company Group (and associate Companies) 622
165. Portland Gas & Coke Company (Oregon and Washington) 633
166. Superior Water Light and Power Company (Wisconsin) 634
167. Central Arizona Light and Power Company (Arizona) 635
168. Florida Power & Light Company (Florida) 636
169. Pennsylvania Power & Light Company (Pennsylvania) 636
170. The Montana Power Company and Montana Power Gas Company (Montana) 637

EXHIBITS*

		Referred to on Page	Printed on Page
1	Rule 3A-2 of the Commission	269	640
2	Circular to United States Attorneys	271	641
3	Circular to United States Attorneys	271	644
4	Circular to Postmasters	272	648
5	Rule 4 of the Commission	273	649
6	Press Release of the Commission, November 22, 1935	274	650
7	Notification of Registration	276	652
8	Public Utility Holding Company Bill with Amendments proposed by Committee of Public Utility Executives, May 3, 1935, as set forth in Section 13 of the Stipulation	277	655
9	Corporate Charts Bond and Share System American Gas System American Company System National Company System Electric Company System United Company System	283	2085
10	History of Capitalization of Bond and Share	284	733
11	Balance Sheet, American & Foreign Power Company Inc.	285	740
12	Consolidated Balance Sheet, American & Foreign Power Company Inc. and Subsidiaries	285	744
13	Comparative Balance Sheet, Bond and Share	286	754
14	American Gas and Subsidiaries Corporate Structure, December 31, 1935	288	760

* Volumes IV, V, VI and VII, Pages 640-2165

		Referred to on Page	Printed on Page
15	Balance Sheet, American Gas	288	764
16	Consolidated Balance Sheet, American Gas and Subsidiary Companies	288	767
17	American Company and Subsidiaries Corporate Structure, November 30, 1935	291	770
18	Balance Sheet, American Company	291	782
19	Consolidated Balance Sheet, American Company and Subsidiary Companies ..	291	786
20	Electric Company and Subsidiaries Corporate Structure, November 30, 1935 ..	294, 315, 316	792
21	Balance Sheet, Electric Company	294	810
22	Consolidated Balance Sheet, Electric Company and Subsidiary Companies ..	294	813
23	Balance Sheet, United Company	296	819
24	Consolidated Balance Sheet, United Company and Subsidiary Companies	296	822
25	National Company and Subsidiaries Corporate Structure, November 30, 1935 ..	299	827
26	Balance Sheet, National Company	299	838
27	Consolidated Balance Sheet, National Company and Subsidiary Companies ..	299	840
28	Bond and Share Investments Schedule A—Total Investments	285, 299, 304 310, 315, 320 429	846
	Schedule B—Analysis of Ledger value and cost of investments in American Company, Electric Company and National Company, December 31, 1934	299	850

		Referred to on Page	Printed on Page
	Schedule C—Analysis of ledger value and cost of investment in American & Foreign Power Company Inc., December 31, 1934	299	854
29	Excerpts from Charter and By-Law Provisions of Bond and Share, Ebasco and certain Holding Defendants	300	858
30	Securities Traded in during Calendar Year 1935	301, 427	884
31	Payments of Bond and Debenture Interest and Dividends	301	904
31A	Appreciation and Depreciation of Property and Investment Accounts	301	914
32	Plan of Organization of American Company and Subscription Agreement for Purchase of Stock	303	931
33	American Company Organization Syndicate Cost and Profit	303	935
34	Organization and Capitalization of Certain Operating Subsidiaries of American Company	306	937
35	Total Operating Revenues American Company Subsidiaries including Non-Utility Companies	308	952
36	Organization and Capitalization of Electric Company and Certain of its Holding and Operating Subsidiaries	312	954

		Referred to on Page	Printed on Page
37	Total Operating Revenues Electric Company Subsidiaries including Non-Utility Companies	313	977
38	Organization and Capitalization of United Company and Certain of its Holding and Operating Subsidiaries	314, 317, 625	978
39	Organization and Capitalization of National Company and Certain of its Holding and Operating Subsidiaries	322	982
40	Total Operating Revenues National Company Subsidiaries including Non-Utility Companies	324	989
41	Stock Voted at Annual Meeting—American Company, Electric Company, National Company and United Company	326	990
42	Distribution of Stock Holdings of Voting Securities—American Company, Electric Company, National Company, and United Company	327	996
43	Officers and Directors Bond and Share System exclusive of American Gas System	328, 331, 337 342	1004
	Schedule A—Tabulation by name of officers and directors		1005
	Schedule B—Tabulation of chairmen of boards of directors or principal executive officers		1027
	Schedule C—Tabulation of members of executive committees of boards of directors		1032
	Schedule D—Tabulations summarizing positions held by directors		1035
44	Personnel of American Company	331	1040

		Referred to on Page	Printed on Page
45	Statements made by Officers of Bond and Share with respect to its relation to Holding Defendants and their Subsidiaries	331	1041
46	Personnel Charts of Operating Companies: Central Arizona Light & Power Company, Minnesota Power & Light Company and Pennsylvania Power & Light Company	338	2096
47	Stock Ownership of Directors of Major Operating Companies	342	1051
48	Excerpts from Minutes of Bond and Share Authorizing Incorporation of Ebasco	353	1052
49	Excerpts from Minutes Relating to Organization of Ebasco	356	1054
50	Bond and Share Letter Advising of Organization of Ebasco	356	1058
51	Board of Directors and Officers of Ebasco: Positions held by them in the Bond and Share System, January 1, 1936	357	1061
52	Personnel of Bond and Share May 1, 1936	359	1065
53	Personnel of Ebasco May 1, 1936	359	1066
54	Ebasco and Phoenix Functional Charts .. General Ebasco Chart, Detailed Ebasco Chart and Phoenix Chart	362, 386	2102
54A	Blanket Insurance Contracts obtained for Serviced Companies	374	1071
55	Phoenix Construction Contract (1936 form)	387, 391	1072
56	Ebasco Services Incorporated Balance Sheet and Income and Expense Statement	392	1082

		Referred to on Page	Printed on Page
57	Excerpts from Minutes Relating to Payment of Service Fees by American Company	395	1087
58	Service Contract with Carolina Power and Light Company	397	1089
59	Service Contract between American Company and Pacific Power and Light Company	397	1096
60	Service Contract with National Company	398	1101
61	Bond and Share Service Contract with Serviced Operating Companies (1922 form)	399	1130
62	Bond and Share Service Contract with Serviced Operating Companies (Form used November 25, 1935)	356, 391, 399	1153
63	Holding Company Service Contract (Form used just prior to November 25, 1935.)	400	1189
64	Bond and Share Functional Charts. Executive and Major Divisions. Operating Divisions	401	2108
65	Phoenix Supervision Contract. (Form used in 1936)	404	1208
66	Phoenix Construction Contract (Form used until 1932)	404	1218
67	Accounting Bulletin	406	1230
68	Financial and Operating Report	366, 407	1242
69	Letter to Ebasco commenting on Operating Report	366, 407	1282
70	Revision of Report Forms by Ebasco	366, 407	1288
71	Cash Situation Report Form and Instructions	366, 374, 408	1296

		Referred to on Page	Printed on Page
72	Cash Control and Conservation Report	366, 374, 408	1301
73	Construction Budget Explanations and Instructions for use and Specimen Report Form	366, 374, 408	1314
74	Construction Budget Recommendation Form	366, 374, 408	1376
75	Expenditure Requisition System	366, 374, 409	1378
76	Sales Budget	366, 374, 409	1386
77	Operating Budget	366, 374, 409	1401
78	Cash Budget	366, 374, 409	1420
79	Master Budget	366, 374, 410	1435
80	Recommended Classification of Accounts	366, 410	1443
81	Tax Report	366, 410	1448
82	Bibliography of Material distributed to all or substantially all Serviced Companies by Bond and Share and Ebasco during year 1935	410	1456
83	Index of Engineering Specifications	369, 411	1543
84	Index Engineering Reports and Letters	370, 411	1552
85	Purchases negotiated for Serviced Companies by Bond and Share (1929-1934)	371, 373, 411	1588
	Schedule A—Volume of Purchases 1929-1934		1589
	Schedule B—Volume Purchase Contracts		1590
	Schedule C—Special Contracts		1599
86	Apparatus Exchange: Bond and Share and Ebasco	411	1605

		Referred to on Page	Printed on Page
87	Contract with General Electric Company (1912)	412	1606
88	Contract with General Electric Company (In effect in 1936)	412	1611
89	Contract with Westinghouse Company (In effect in 1936)	412	1628
90	Construction Work for Serviced Companies (1925-1935)	413	1640
91	Services Rendered to Idaho Power Company	389, 413	1648
92	Construction and Reconstruction: Kansas Gas & Electric Company	413	1768
93	Income and Expenses of Bond and Share (1926-1935)	414	1810
	Schedule A—Summary. Income and Expenses		1811
	Schedule B—Bond and Share: Income from Holding Companies and their Subsidiaries in the United States...		1813
	Schedule C—Phoenix Engineering Corporation: Income and Expenses March 1, 1933 to December 31, 1935		1820
	Schedule D—Bond and Share: Expenses		1823
	Schedule E—Phoenix Utility Company: Income and Expenses 1926 to February 28, 1933		1829
94	Intercompany Loans: Bond and Share, American Company, Electric Company, National Company and subsidiaries...	419	1830

		Referred to on Page	Printed on Page
95	Bond and Share: Short Term Loans Arranged for Serviced Companies	419	1852
96	Sales of Bonds and Preferred Stocks negotiated by Bond and Share. (January 1, 1920—December 31, 1935)	421, 424, 467	1854
97	Sales of Preferred Stock of Companies in Customer-Ownership Campaigns upon which a Commission was received by Bond and Share	426, 467	1894
98	Bond and Share Personnel of Securities Department. (December 1, 1929).....	427	1896
99	Organization of Operating Subsidiaries of American Gas	429, 432	1897
100	American Gas Stock Voted at Annual Meetings	433	1902
101	American Gas Officers and Directors	437	1904
102	American Gas Purchase Contracts	452	1910
103	American Gas and Subsidiaries Gross Purchases	452	1932
104	American Gas Apparatus Exchange	454	1939
105	American Gas Insurance Contracts	456	1940
106	Bibliography of Informational Material —American Gas	461	1941
107	American Gas Loans to Subsidiaries	467	1957
108	American Gas Income and Expenses	467	1958
109	Personnel of American Gas, February 1936	467	1960
110	Map of Service Areas of the Principal Electric Utility Systems in the United States	477	2112

	Referred to on Page	Printed on Page
111 Electric Operations of Subsidiaries of the Holding Defendants	490, 493, 496 498, 504, 505 507, 526, 530 537, 540, 542 553, 561, 570 572, 583, 586 587, 591, 593 597, 605, 607 609	1964
112 Electric Operations—Comparative Statement of United States totals with Operations of Subsidiaries of Major Holding Defendants. (1934)	490	2060
112A Maps of Electric Service Areas and Principal Generating Stations and Transmission Lines of Subsidiaries of Holding Defendants	490	2114 2116
113 Maps of Operating Company Systems:		
Map No. 1. Systems of Pacific Power & Light Company and Northwestern Electric Company	491	2118
Map No. 2. System of The Washington Water Power Company	491	2120
Map No. 3. System of The Montana Power Company	504	2122
Map No. 4. System of Minnesota Power & Light Company	508	2124
Map No. 5. System of Nebraska Power Company and Citizens Power & Light Company	511	2126
Map No. 6. System of Kansas Gas and Electric Co.	513	2128

	Referred to on Page	Printed on Page
Map No. 7. System of Florida Power & Light Co.	515	2130
Map No. 8. System of Central Arizona Light & Power Co.	516	2132
Map No. 9. Systems of Texas Power & Light Company and Texas Electric Service Co.	517, 518, 520 521	2134
Map No. 10. System of Dallas Power & Light Company	522	2136
Map No. 11. System of Utah Power & Light Company	523	2138
Map No. 12. System of Idaho Power Company	523	2140
Map No. 13. Systems of Arkansas Power & Light Co., Louisiana Power & Light Co., and Mississippi Power & Light Co.	535, 550	2142
Map No. 14. Systems of Memphis Power & Light Co. and West Tennessee Power & Light Co.	536, 552	2144
Map No. 15. System of Houston Lighting & Power Company	555	2146
Map No. 16. System of Birmingham Electric Company	557	2148
Map No. 17. Systems of Carolina Power & Light Co. and Tennessee Public Service Co.	558	2150
Map No. 18. System of Pennsylvania Power & Light Co.	570	2152

		Referred to on Page	Printed on Page
	Map No. 19. Systems of Appalachian Electric Power Company, The Ohio Power Company (in part), Kentucky & West Virginia Power Company, Kanawha Valley Power Company and Kingsport Utilities, Inc.	576	2154
	Map No. 20. Systems of Indiana & Michigan Electric Company, Indiana General Service Company, The Ohio Power Company (in part) and Wheeling Electric Company	576	2156
	Map No. 21. Systems of The Scranton Electric Co. and Atlantic City Electric Co.	605, 608	2158
114	Map of Principal Gas Operations of Subsidiaries of Holding Defendants and of Certain Other Companies	620	2160
115	Communities Served with Gas at Retail. (December 31, 1935)	622	2063
116	Maps of Natural Gas Operations of United Company and Portland Gas & Coke Company	622, 623, 626 633	2162 2164

Subject	*Page*
APPEAL PAPERS*	
Statement Under Rule 13	2167
Opinion of District Court	2172
Findings of Fact and Conclusions of Law	2214
Decree	2260
Petition for Appeal	2266
Assignment of Errors and Prayer for Reversal	2269
Order Allowing Appeal	2299
Undertaking for Costs on Appeal	2302
Citation	2305
Order Approving Stipulation of Facts as Statement of Evidence	2308
Praecipe	2309
Stipulation as to Transcript of Record	2313
Clerk's Certificate	2314
Proceedings in U. S. C. C. A., Second Circuit	2315
Opinion, Manton, J.	2315
Concurring opinion, Hand, J.	2334
Judgment	2335
Clerk's Certificate	2336
Order Allowing Certiorari	2336

* Volume VIII, Pages 2166-2314.

IN THE

United States District Court

FOR THE SOUTHERN DISTRICT OF NEW YORK

1

Securities and Exchange Commission,
Plaintiff,

—*against*—

Electric Bond and Share Company,
American Gas and Electric Company,
American Power & Light Company,
National Power & Light Company,
Electric Power & Light Corporation, and
United Gas Corporation,
Defendants; and

Power Securities Corporation,
Idaho Power Company,
Utah Power & Light Company,
United Gas Public Service Company,
Houston Gulf Gas Company,
The Montana Power Company,
Nebraska Power Company,
Pacific Power & Light Company,
Lehigh Power Securities Corporation,
Appalachian Electric Power Company,
The Ohio Power Company,
The Scranton Electric Company,
Atlantic City Electric Company,
The Washington Water Power Company,
Pennsylvania Power & Light Company, and
Easton Consolidated Electric Company,
Intervening Defendants.

2

In Equity
No. E81-378

Homer S. Cummings, individually and as Attorney General of the United States; James A. Farley, individually and as Postmaster General of the United States; and James M. Landis, Robert E. Healy, George C. Mathews and James D. Ross, individually and as members of and constituting the Securities and Exchange Commission,
Cross-Defendants.

3

Subpoena

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To:

ELECTRIC BOND AND SHARE COMPANY
AMERICAN GAS AND ELECTRIC COMPANY

AMERICAN POWER & LIGHT COMPANY
ELECTRIC POWER & LIGHT CORPORATION

NATIONAL POWER & LIGHT COMPANY, and UNITED GAS CORPORATION

Greeting:

YOU ARE HEREBY COMMANDED to appear before the Judges of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, to answer a bill of complaint exhibited against you in the said Court, in a suit in Equity by Securities and Exchange Commission, Plaintiff, and to further do and receive what the said Court shall have considered in this behalf. And this you are not to omit under the penalty on you and each of you of TWO HUNDRED AND FIFTY DOLLARS ($250).

WITNESS Honorable John C. Knox, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, on the 26th day of November in the year One Thousand Nine Hundred and Thirty-five

and of the Independence of the United States the One Hundred and Sixtieth. 7

CHARLES WEISER,
Clerk.

JOHN J. BURNS,
ROBERT H. JACKSON,
Solicitors.

120 Broadway,
New York, N. Y.

The Defendants are required to file their answers or other defense in the above cause in the Clerk's Office on or before the twentieth day after service hereof excluding the day of said service; otherwise the bill aforesaid may be taken PRO CONFESSO. 8

(Seal) CHARLES WEISER,
Clerk.

I hereby certify, That on the 26 day of November, 1935, at the City of New York, in my District, I served the within Subpoena in Equity upon the within-named defendant Electric Bond and Share Company by exhibiting to A. C. Ray, as Treas- of said Co., at 2 Rector Street, N. Y. City the within original and at the same time leaving with him a copy thereof and at the same time and place, left with him a copy of bill of complaint in this action. 9

Raym. J. Mulligan,
United States Marshall,
Southern District of New York.

Dated, November 30, 1935.

Order for Leave to File Amended and Supplemental Bill

10

(Title of Court and Cause)

Upon reading and filing the amended and supplemental bill of complaint herein and the consent of the attorneys for the defendants and intervening defendants, it is hereby

ORDERED that the plaintiff is hereby given leave to file the amended and supplemental bill of complaint and the defendants shall have twenty days from the date of this order to answer same.

11

MACK,
United States District Judge.

Consent is given to the entry of the foregoing order without notice.

SIMPSON THACHER & BARTLETT,
Attorneys for Defendants and
Intervening Defendants.

12

Amended and Supplemental Complaint

(Title of Court and Cause) 13

To the Honorable the Judges of the District Court of the United States for the Southern District of New York, Sitting in Equity:

The Securities and Exchange Commission brings this civil suit in equity by its solicitors, John J. Burns, General Counsel, and Robert H. Jackson, Special Counsel, against Electric Bond and Share Company, American Gas and Electric Company, American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company, United Gas Corporation, Power Securities Corporation, Idaho Power Company, Utah Power and Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company, Pacific Power and Light Company, and Lehigh Power Securities Corporation, and respectfully represents to this Honorable Court as follows: 14

I.

That on November 26th, 1935, the plaintiff filed its original bill of complaint herein. That on December 6th, 1935, an order was entered by this court in this cause granting leave to Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, Power Securities Corporation, Idaho Power Company, Utah Power and Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, 15

Nebraska Power Company, Pacific Power and Light
16 Company, the Washington Water Power Company, Lehigh Power Securities Corporation, Pennsylvania Power and Light Company, and Easton Consolidated Electric Company to intervene herein as parties defendant and to file answers and cross-bills to plaintiff's bill of complaint. That plaintiff seeks no relief against intervenors, Appalachian Electric Power Company, The Ohio Power Company, the Scranton Electric Company, Atlantic City Electric Company, The Washington Water Power Company, Pennsylvania Power & Light Company, and Easton Consolidated Electric Com-
17 pany, for reasons hereinafter appearing.

II.

1) That the following terms, wherever they appear herein, are used in the sense defined by Section 2(a) of the Act: Public utility company; electric utility company; gas utility company; holding company; subsidiary company; holding company system; affiliate; registered holding company; security; voting security; utility assets; service contract; sales contract; construction contract.

18 2) That the term "defendants" when used in this complaint, except when the context otherwise indicates, means:

Electric Bond and Share Company,
American Gas and Electric Company,
American Power & Light Company,
Electric Power & Light Corporation,
National Power & Light Company,
United Gas Corporation,

Power Securities Corporation,
Idaho Power Company,
Utah Power & Light Company,
United Gas Public Service Company,
Houston Gulf Gas Company,
The Montana Power Company,
Nebraska Power Company,
Pacific Power & Light Company, and
Lehigh Power Securities Corporation.

III.

That it appears to the plaintiff Commission that the defendants and each of them since December 1, 1935 have engaged, are now engaged and will continue to engage in acts and practices which constitute and will constitute a violation of the provisions of the Public Utility Act of 1935 and of the rules, regulations and orders thereunder, and the plaintiff therefore brings this suit in its own right pursuant to section 18 (f) and section 18 (g) of Title I of the said Act, for the purpose of enjoining and restraining the defendants from violating the provisions of section 4(a) (1), (2), (3), (4), (5), and (6) of the Act and for the purpose of requiring the defendants to register pursuant to the provisions of section 5 of the Act. That jurisdiction of this suit is conferred upon this Honorable Court by section 25 of the Act.

IV.

That each of the defendants is a duly organized and existing corporation, their respective States of Incorporation being:

Defendant.	*State of Incorporation.*
Electric Bond and Share Company	New York
American Gas and Electric Company	New York
American Power & Light Company	Maine
Electric Power & Light Corporation	Maine
National Power & Light Company	New Jersey
United Gas Corporation	Delaware
Power Securities Corporation	New Hampshire
Idaho Power Company	Maine
Utah Power & Light Company	Maine
United Gas Public Service Company	Delaware
Houston Gulf Gas Company	Delaware
The Montana Power Company	New Jersey
Nebraska Power Company	Maine
Pacific Power & Light Company	Maine
Lehigh Power Securities Corporation	Delaware

That none of the defendants has made application to the Securities and Exchange Commission (a) under section 2 (a) (7) (b) of the Act for an order declaring that it is not a holding company within the meaning of said Act, or (b) under Section 3(a) or any other section of the Act, for an order exempting it from any provision of the Act, and that the Commission has made no such order. That none of said defendants has registered with the Securities and Exchange Commission pursuant to Section 5 of the Act; and that the defendants have advised and notified the Commission that they will not register pursuant to section 5 of the Act.

V.

That each of the defendants, American Power & Light Company, American Gas and Electric Company, Electric Power & Light Corporation, United Gas Corporation, National Power & Light Company, Power Securities Corporation, Idaho Power Company, Utah Power and Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company, Pacific Power and Light Company, and Lehigh Power Securities Corporation is a holding company as defined by section 2 (a) (7) (A) of the Act, in that, it owns, controls or holds with power to vote ten percentum or more of the outstanding securities of one or more companies which are public utility companies within the meaning of section 2 (a) (3), (4) and (5) and that defendant, Electric Bond and Share Company is a holding company as defined by section 2 (a) (7) (A) of the Act in that it owns, controls or holds with power to vote ten percentum or more of the outstanding voting securities of the defendants American Gas and Electric Company, American Power & Light Company, Electric Power & Light Corporation and National Power & Light Company, each of which is a holding company within the meaning of the said Act.

VI.

That Electric Bond and Share Company is the top holding company in a holding company system, commonly known and sometimes hereinafter referred to as the Electric Bond and Share System,

and which system includes all of the other defend-
28 ants, as well as many other corporations. That the defendants American Gas & Electric Company, American Power & Light Company, Electric Power & Light Corporation, and National Power & Light Company are intermediate holding companies in the Electric Bond and Share System. Each such intermediate holding company, together with its subsidiary holding companies and public utility companies, is likewise a holding company system, commonly known and sometimes hereinafter referred to, respectively, as the American Gas & Electric System, the American Power & Light Sys-
29 tem, the Electric Power & Light System, and the National Power & Light System.

That the defendants The Montana Power Company, Nebraska Power Company, and Pacific Power & Light Company are subsidiaries of the defendant American Power & Light Company and are included within the American Power & Light System.

That the defendants, United Gas Corporation, United Gas Public Service Company, Houston Gulf Gas Company, Utah Power & Light Company, Power Securities Corporation, and Idaho Power Company are all subsidiaries of the Electric Power
30 & Light Corporation and included within the Electric Power & Light System.

That the defendant Lehigh Power Securities Company is a subsidiary of National Power & Light Company and included within the National Power & Light System.

That defendant Electric Bond and Share Company, through its stockownership in and control of the defendants, American Power and Light Company, American Gas and Electric Company, Elec-

tric Power and Light Corporation and National Power and Light Company owns and controls electric and gas utility companies which are subsidiaries, as defined by the Act, of the defendants American Gas and Electric Company, American Power and Light Company, Electric Power and Light Company or National Power and Light Company, and which own and operate electric utility assets and gas utility assets. 31

That the operating revenues of the Electric Bond and Share system are primarily derived from the sale of natural and manufactured gas and electric energy.

That the electric customers of the Electric Bond and Share system number over 2,300,000 and its revenues are derived from properties located in 32 states of the United States. 32

That its electric properties are generally divided and grouped in seven large interconnected interstate groups which transmit annually a total of approximately 13,000,000,000 kilowatt hours of electric energy, about 3,000,000,000 of which are transmitted across state lines.

That its gas properties form interconnected interstate systems for the production and transmission of manufactured and natural gas. That the gas utilities of the system operate in fifteen states and one foreign country; that the producing properties of this system embrace approximately 1,428,000 acres of gas fields; that the system owns or controls more than nine thousand miles of pipe lines used in the transmission of gas; that the system serves in excess of 450,000 customers; and that the yearly production of the system amounts to more than two hundred billion cubic feet of natural and 33

manufactured gas, in excess of sixty billion of
34 which are transported across state lines.

That the outstanding stock of the Electric Bond and Share Company is owned by more than 130,000 stockholders located in every state of the United States, in each of its possessions and in many foreign countries.

VII.

That the defendants are now doing and will continue to do the following acts forbidden to unregistered holding companies by the provisions of
35 section 4 (a) of the Act, as hereinafter more particularly set forth:

1.) That since December 1, 1935, directly or indirectly, each and all of the defendants have engaged and will continue to engage in selling, transporting, transmitting, or distributing natural or manufactured gas and electric energy and have owned or operated and will continue to own or operate utility assets for the transportation, transmission, or distribution of, natural or manufactured gas or electric energy, in interstate commerce, as
36 forbidden to unregistered holding companies by section 4(a) (1) of the Act.

2.) That directly or indirectly defendants Electric Bond and Share Company and American Gas and Electric Company have negotiated and entered into by use of the mails or means or instrumentalities of interstate commerce service, sales and construction contracts, within the meaning of section 2 (a) (18), (19) and (20), undertaking to perform

service, sales and construction work for, and to sell goods to, public utility companies or holding companies and in the normal course of business since December 1, 1935, have continuously engaged and will continue to engage, either in their own names or through wholly owned subsidiaries, by use of the mails or means or instrumentalities of interstate commerce, in taking steps in the performance of such contracts, or similiar contracts, similarly entered into, as forbidden to unregistered holding companies by section 4 (a) (2) of the Act. 37

3.) That directly or indirectly each of the defendants has distributed or made public offerings for sale or exchange, and will continue as its business needs require to distribute or make public offerings for sale or exchange of its securities or the securities of its subsidiary companies or affiliates, by use of the mails or means or instrumentalities of interstate commerce; and have sold and will continue to sell as its business needs require such securities having reason to believe that such securities, by use of the mails or means or instrumentalities of interstate commerce, will be distributed or made the subject of public offerings, as forbidden to unregistered holding companies by section 4 (a) (3) of the Act. 38 39

4.) That directly or indirectly each of the defendants, by use of the mails or means or instrumentalities of interstate commerce, has acquired or negotiated for, and will continue as its business needs require to acquire, or negotiate for the acquisition of securities of its subsidiary companies

or affiliates, or of public utility or holding com-
40 panies, as forbidden to unregistered holding companies by section 4 (a) (4) of the Act.

5.) That since December 1, 1935, the defendants Electric Bond and Share Company and American Gas & Electric Company, in doing the acts described in sub-paragraph (2) of this paragraph, and all of the defendants in doing the acts described in sub-paragraphs (1), (3), and (4) of this paragraph have engaged, and will continue to engage, in business in interstate commerce, as forbidden to unregistered holding companies by Section 4 (a) (5)
41 of the Act.

6.) That directly or indirectly each and all of the defendants own, control, or hold with power to vote securities or subsidiary companies which sell, transport, transmit, or distribute natural or manufactured gas or electric energy and which own and operate utility assets for the transportation, transmission, or distribution of natural or manufactured gas or electric energy, in interstate commerce, as forbidden to unregistered holding companies by section 4 (a) (6) of the Act.
42

7.) That directly or indirectly defendant Electric Bond and Share Company owns, controls, or holds with power to vote all of the outstanding securities of one or more subsidiary companies which, in the ordinary course of their business, by use of the mails or means or instrumentalities of interstate commerce, are engaged in taking steps in the performance of service, sales or construction contracts, undertaking to perform services or con-

struction work for or sell goods to public utility companies or holding companies, as forbidden to unregistered holding companies by section 4 (a) (6) of the Act. 43

VIII.

1.) That defendant Electric Bond and Share Company owns voting securities of the defendants American Gas and Electric Company, American Power & Light Company, Electric Power & Light Corporation, United Gas Corporation and National Power & Light Company in the following amounts:

A. 846,985 shares of the common stock of defendant American Gas and Electric Company, constituting 17.51 per centum of the voting securities of said company. 44

B. 51,840 shares of the $5 Preferred Stock and 937,213 shares of the common stock of defendant American Power & Light Company, constituting 20.77 per centum of the voting securities of said company.

C. 485 shares of the $7 Preferred Stock and 1,976,638 shares of the common stock of defendant Electric Power & Light Corporation, constituting 47.20 per centum of the voting securities of said company. 45

D. 752,666 shares of common stock of defendant United Gas Corporation, constituting 7 per centum of the voting securities of said company. Defendant Electric Power & Light Corporation owns 884,610 shares of the $7

Second Preferred Stock and 3,795,086 shares of
46 the common stock constituting 61.58 per centum of the voting securities of said company.

E. 2,540,438 shares of the common stock of defendant National Power & Light Company, constituting 46.56 per centum of the voting securities of said company.

2.) That defendant Electric Bond and Share Company owns all the capital stock of Ebasco Services Incorporated which, in turn, owns all the capital stock of Phoenix Engineering Corporation, and
47 Two Rector Street Corporation.

IX.

1.) That defendant American Gas and Electric Company owns all or substantially all the voting securities of the following public utility companies, which are also holding companies:

A. Atlantic City Electric Company, which in turn owns 50 per centum of the voting securities of Deepwater Operating Company, a public
48 utility company.

B. The Ohio Power Company, which in turn owns 50 per centum of the voting securities of Beech Bottom Power Company, Inc., a public utility company.

C. The Scranton Electric Company, which in turn owns 50 per centum of the voting securities of Stanton Operating Company, a public utility company.

D. Appalachian Electric Power Company, which in turn owns all of the voting securities of Kentucky and West Virginia Power Company, Inc., and Kingsport Utilities, Inc., both public utility companies.

2.) That defendant American Gas and Electric Company owns all or substantially all of the voting securities of the following public utility operating companies:

A. Indiana General Service Company.
B. Indiana and Michigan Electric Company.
C. Wheeling Electric Company.
D. Southern Ohio Public Service Company.

X.

1.) That defendant American Power & Light Company owns all or substantially all of the voting securities of the following public utility companies which are also holding companies:

A. Defendant Montana Power Company which in turn owns all or substantially all of the voting securities of Idaho Transmission Company, a public utility company.

B. Defendant Nebraska Power Company which in turn owns all or substatnially all of the voting securities of Citizen's Power and Light Company, a public utility company.

C. Defendant Pacific Power and Light Company which in turn owns all or substan-

tially all of the voting securities of Inland
52 Power and Light Company, a public utility company.

D. The Washington Water Power Company, which in turn owns all or substantially all of the voting securities of Chelan Electric Company, a public utility company.

2.) That defendant American Power & Light Company owns all or substantially all of the voting securities of the following public utility companies.

A. Central Arizona Light & Power Co.
53 B. Florida Power and Light Company.
C. Kansas Gas and Electric Company.
D. Minnesota Power and Light Company.
E. Montana Power Gas Company.
F. New Mexico Electric Service Company.
G. Northern Power Company.
H. Texas Electric Service Company.
I. Texas Power and Light Company.
J. Texas Public Utilities Corporation.

3.) That defendant American Power & Light Company owns 84.03% of the voting securities of Portland Gas and Coke Company, 66.57% of the
54 voting securities of Superior Water, Light and Power Company and 67.63% of the voting securities of Northwestern Electric Company, all public utility companies.

XI.

1.) That defendant Electric Power & Light Corporation owns all or substantially all of the voting securities of the defendant Power Securities Cor-

poration, a holding company. Defendant Power Securities Corporation owns all or substantially all of the voting securities of the defendant Idaho Power Company, a public utility company and holding company. Idaho Power Company owns all or substantially all of the voting securities of the Nevada Power Company and Salmon River Power & Light Company, both public utility companies. 55

2.) That defendant Electric Power & Light Corporation owns all or substantially all of the voting securities of the defendant Utah Power & Light Company, a holding company and public utility company. That Utah Power & Light Company owns all or substantially all of the voting securities of the Utah Light & Traction Company, Western Colorado Power Company, and Bountiful Light & Power Company, all public utility companies. 56

3.) That defendant Electric Power & Light Corporation owns all or substantially all of the voting securities of the following public utility operating companies:

A. Arkansas Power and Light Company.
B. Louisiana Power and Light Company.
C. Mississippi Power and Light Company. 57
D. New Orleans Public Service, Incorporated.

4.) That defendant Electric Power & Light Corporation owns 69.98% of the voting securities of Dallas Power and Light Company, a public utility company, and 61.58% of the voting securities of defendant United Gas Corporation, a public utility company and holding company, as hereinafter alleged.

XII.

58 1.) That defendant United Gas Corporation owns all or substantially all of the voting securities of defendant United Gas Public Service Company, its principal subsidiary operating company, which in turn owns all or substantially all of the voting securities of United Production Company, Southern Gas and Fuel Company, Compania Mexicana de Gas, S. A., Southern Gas Utilities, Inc., Northern Texas Utilities Company, all public utility companies, and defendant Houston Gulf Gas Company, a public utility company and hold-
59 ing company.

2.) That defendant Houston Gulf Gas Company in turn owns all or substantially all of the voting securities of Houston Gas and Fuel Company, a public utility company.

3.) That defendant United Gas Corporation in addition to the above named companies, owns substantial amounts of the voting securities of the following public utility companies in approximate percentages as follow:

60 A. Mississippi River Fuel Corporation—47 %

B. El Paso Natural Gas Company—27 %

C. Natural Gas Company, Inc.—50 %

XIII.

1.) That defendant National Power & Light Company owns all or substantially all of the voting securities of defendant Lehigh Power Securities

Corporation, a holding company, which in turn owns voting securities of the following public utility companies which are also holding companies: 61

A. All or substantially all of the voting securities of Lehigh Valley Transit Company, which owns all or substantially all of the voting securities of Easton Consolidated Electric Company. Easton Consolidated Electric Company in turn owns all or substantially all of the voting securities of Edison Illuminating Company of Easton, a public utility company.

B. 75.63 % of the voting securities of Pennsylvania Power and Light Company, which owns all or substantially all of the outstanding voting securities of the following public utility companies: 62

(1) The Carlisle Gas and Water Company.
(2) Columbia Gas Company.
(3) Lehigton Electric Light and Power Company.
(4) Pine Grove Electric Light, Heat and Power Company.
(5) Shenandoah Light, Heat and Power Company. 63
(6) Susquehanna Gas Company.

2.) That defendant National Power and Light Company owns all or substantially all of the voting securities of the following public utility companies:

A. Birmingham Electric Light Company.
B. Carolina Power and Light Company.

C. Holston River Electric Company.
64 D. Houston Lighting and Power Company.
E. Memphis Power and Light Company.
F. Roanoke River Power Company.
G. Tennessee Public Service Company.
H. West Tennessee Power and Light Company.

3.) That defendant National Power and Light Company, in addition to the companies named above, also owns approximately 17 per cent of the outstanding voting securities of the Memphis Natural Gas Company, a pipeline company which
65 transmits gas from Louisiana through Arkansas and Mississippi into Tennessee.

XIV.

That the following holding companies, which are members of the Electric Bond and Share System and are more specifically described in paragraphs IX, X and XIII hereof, have not been included in paragraph two hereof as defendants:

66 *American Gas and Electric System.*

Appalachian Electric Power Company
The Ohio Power Company
The Scranton Electric Company
Atlantic City Electric Company

American Power and Light System.

Washington Water Power Company

National Power and Light System.

67

Pennsylvania Power and Light Company
Lehigh Valley Transit Company
Easton Consolidated Electric Company

That said companies have been omitted from the list of defendants in paragraph two hereof, by reason of the following: On November 29, 1935, the plaintiff, Securities and Exchange Commission, acting pursuant to the authority conferred upon it by Section 3 (a) of the Act, adopted a rule known as rule 3 A-2, a copy of which rule is attached hereto, marked "Exhibit A" and made a part hereof. 68 Said rule, subject to the time limitations therein specified, exempts the holding companies of the classes therein described from any obligation, duty or liability imposed by the Act. From the information now available to the plaintiff it appears to said plaintiff that said Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, Washington Water Power Company, Pennsylvania Power and Light Company, Lehigh Valley Transit Company and Easton Consolidated Electric Company are companies which are included within one or more of the classes of companies specified 69 in said rule and are, therefore, now exempt, under the terms of said rule, from any obligation, duty or liability imposed by the Act, and specifically are by said rule exempt from the requirement of registration under Section 5 of the Act.

XV.

1.) That each of the operating electric utility companies included within the Electric Bond & Share System is engaged in the business of genera-

ting or receiving electric energy and delivering and
70 distributing such electric energy for sale. That a large amount of the electric energy generated and received by the electric utility companies in the system is transmitted in interstate commerce from the state in which it is generated to the states in which it is distributed and consumed. That many of the electric utility companies in the Electric Bond & Share System own, or lease and operate, utility assets for the transmission of, or take part in the transmission of, large amounts of electric energy in interstate commerce. That many of the electric utility companies in the system own, or
71 lease and operate, electric power lines which cross state lines, and that such companies transmit in interstate commerce energy generated in one state to other states in which such energy is delivered, distributed and consumed. That many of the electric utility companies in the system own or lease and operate power lines over which such companies transmit electric energy generated in one state to the borders of such state, and that at such borders, these power lines are connected with the power lines of electric utility companies operating in contiguous states, where such electric energy is
72 delivered, distributed and consumed. That many of the electric utility companies in the Electric Bond & Share System receive electric energy in one state which has been generated in and transmitted from another state, and distribute and deliver such electric energy for consumption in the state in which it is received.

That electric energy which is transmitted in interstate commerce and across state lines is herein for convenience referred to as "interstate electric energy" and that the generation, receipt, transmission,

delivery, or distribution of electric energy is herein for convenience referred to as "handling". That, during the year 1933, (a) the total quantity of all electric energy handled by each operating electric utility company in the Electric Bond & Share System, (b) the quantity of interstate electric energy handled by each such company, and (c) the ratio of the interstate electric energy handled by each such company to the aggregate amount of electric energy handled by such company was as follows: 73

Company	Total Quantity of Electric Energy Handled (1000 Kilowatt Hours)	Interstate Electric Energy Handled (1000 Kilowatt Hours)	Ratio Interstate Handled to Total Handled
American Gas & Electric System			
Atlantic City Electric Co. (Includes energy supplied by Deep Water Operating Company.)	193,920	....	....
Appalachian Electric Power Co. (Includes Kentucky-West Virginia Power Co. and Kingsport Utilities, Inc.)	1,348,491	982,370	72.8
Indiana General Service Co.	130,085	....	....
Indiana & Michigan Electric Co.	487,239	364,095	74.7
Ohio Power Co. (Includes energy supplied by Beech Bottom Power Co., Southern Ohio Public Service Co. and Ohio State Power Co.)	1,804,945	888,244	49.2
Scranton Electric Co. (Includes energy supplied by Scranton Operating Company)	240,555	....	....
Wheeling Electric Co.	92,040	9,270	10.1
American Power & Light System			
Central Arizona Light & Power Co.	76,137	....	....
Florida Power & Light Co.	187,484	....	....

74

75

	Company	Total Quantity of Electric Energy Handled (1000 Kilowatt Hours)	Interstate Electric Energy Handled (1000 Kilowatt Hours)	Ratio Interstate Handled to Total Handled
76	Kansas Gas & Electric Co.	225,142	7,411	3.3
	Minnesota Power & Light Co.	306,679	30,747	10.0
	Montana Power Co. (Includes Idaho Transmission Co.)	889,412	17,886	2.0
	Nebraska Power Co. (Includes Citizens Power & Light Co.)	314,903	24,458	7.8
	New Mexico Electric Service Co.	2,020	...	....
	Northern Power Co.	18,396	18,396	100.0
77	Northwestern Electric Co.	266,944	123,543	46.3
	Pacific Power & Light Co. (Includes Inland Power & Light Co.)	327,033	50,725	15.5
	Superior Water, Light & Power Co.	12,685	12,351	97.4
	Texas Electric Service Co.	399,417	....	....
	Texas Power & Light Co.	492,276	....	....
	Texas Public Utilities Corp.	1,740	....	....
	Washington Water Power Co.	652,882	209,663	32.1
	Electric Power & Light System			
	Arkansas Power & Light Co.	295,801	184,007	62.2
	Dallas Power & Light Co.	210,132	....	....
78	Louisiana Power & Light Co.	530,646	309,822	58.4
	Mississippi Power & Light Co.	132,668	126,559	95.4
	New Orleans Public Service, Inc.	296,420	....	....
	Utah Power & Light Co. (Includes Utah Light and Traction Company)	486,101	242,159	49.8
	Western Colorado Power Co.	20,212	....	....
	Idaho Power Co.	402,652	16,390	4.1
	Salmon River Power & Light Co.	626	....	....
	Nevada Power Co.	441	441	100.0
	Bountiful Light & Power Co.	812	....	....

Company	Total Quantity of Electric Energy Handled (1000 Kilowatt Hours)	Interstate Electric Energy Handled (1000 Kilowatt Hours)	Ratio Interstate Handled to Total Handled
National Power & Light System			
Birmingham Electric Co.	196,012	....	....
Carolina Power & Light Co.	969,965	572,770	59.1
Holston River Co.	1,223	....	....
Houston Lighting & Power Co.	442,878	....	....
Pennsylvania Power & Light Co. (Includes Lehighton Electric Light and Power Co., Carlisle Gas and Water Co. and Pinegrove Electric Light Heat and Power Co., and energy supplied by Scranton Operating Co. and Canestoga Transmission Co.)	1,575,896	43,435	2.8
Memphis Power & Light Co.	169,511	752	0.4
Tennessee Public Service Co.	90,238	89,821	99.5
West Tennessee Power & Light Co.	16,066	....	....

That at the present time, the ratio of the interstate electric energy handled by each of the foregoing electric utility companies to the aggregate amount of electric energy handled by it is substantially the same as, or in excess of, such ratio during the year 1933, as hereinabove alleged.

2.) That each of the gas utility companies included within the Electric Bond and Share System is engaged in the business of manufacturing or extracting gas and delivering and distributing such gas for sale. That a large amount of the natural and manufactured gas extracted or manufactured by the gas utility companies in the system is trans-

mitted in interstate commerce from the state in
82 which it is extracted or manufactured to the states in which it is distributed and consumed. That many of the gas utility companies in the system own or lease and operate utility assets for the transmission of or take part in the transmission of large amounts of natural and manufactured gas in interstate commerce. That the following companies in the Electric Bond and Share System transmit or take part in the transmission of natural and manufactured gas in interstate commerce:

83 A. *Electric Power & Light System.* That defendant United Gas Corporation, a member of the Electric Power & Light System, through its subsidiary, the defendant United Gas Public Service Company, more specifically described in paragraph XII hereof, owns and operates an interconnected interstate system of pipe-lines which are used in the transmission of a substantial amount of natural and manufactured gas in interstate commerce through the states of Florida, Alabama, Mississippi, Louisiana and Texas. That in addition, the following
84 subsidiaries of United Gas Corporation, more specifically described in paragraph XII hereof, own and operate utility assets for the transmission of and transmit or take part in the transmission of substantial amounts of manufactured or natural gas in interstate commerce:

(1) Mississippi River Fuel Corporation, which owns and operates an interstate pipeline carrying large quantities of natural gas in interstate commerce from fields in Louisiana to Missouri.

(2) El Paso Natural Gas Company, which owns and operates an interstate interconnected system of pipe-lines used in the transmission of a substantial amount of natural and manufactured gas in interstate commerce from New Mexico into Texas, Arizona and the Republic of Mexico. 85

(3) Consolidated Gas Utilities Company, which owns and operates an interconnected system of pipe-lines used in the transmission of a substantial amount of natural and manufactured gas in interstate commerce from Texas into Oklahoma and Kansas. 86

B. *American Power & Light System.* That the following subsidiary gas utility companies of the American Power & Light Company, which are more specifically described in paragraph X hereof, own and operate utility assets for the transmission of natural or manufactured gas in interstate commerce, and transmit or take part in the transmission of substantial amounts of natural or manufactured gas in interstate commerce: 87

(1) Portland Gas and Coke Company, which transmits substantial amounts of gas, natural or manufactured, in interstate commerce from Oregon to Washington.

(2) Superior Water, Light and Power Company, which transmits substantial amounts of gas, natural or manufactured, from Minnesota to Wisconsin.

(3) Central Arizona Light and Power Company, which receives and distributes in Arizona substantial amounts of natural gas produced in New Mexico.

88

1.) That defendant Electric Bond and Share Company organized the defendants American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company and American Gas and Electric Company for the purpose and with the intention of employing said corporations as its corporate instrumentalities for the acquisition, financing and control of public

89

utility companes; that at the time of the organization of the aforesaid defendant corporations, defendant Electric Bond and Share Company acquired by subscription and purchase or in exchange for property, voting securities of said corporations in an amount sufficient to enable it to dominate and control the affairs of said corporations, and has ever since retained voting securities in an amount sufficient to insure such domination and control. That defendant Electric Bond and Share Company has in fact at all times completely dominated and

90

controlled all the corporate activities of said defendants. That defendant Electric Bond and Share Company caused its own directors and executive officers to be elected directors and officers of each of said defendants, with the exception of American Gas and Electric Company, at the time of its organization, and that this substantial identity of directors and executive officers continued until after the passage of the Public Utility Holding Company Act of 1935; that shortly after the passage of the Act, defendant Electric Bond and Share Company,

caused the then officers and directors of said defendants, with the exception of American Gas and 91
Electric Company, to resign and elected other executive officers of the Electric Bond and Share Company System in their stead, so as to terminate the substantial identity of directors and executive officers previously existing, but so as to continue in control of said defendants, a management completely subject to the domination and control of the defendant Electric Bond and Share Company. That the officers and directors of all of said defendant companies, including American Gas and Electric Company, have at all times been and now are persons designated by Electric Bond and Share Com- 92
pany, and who, by virtue of their relations with Electric Bond and Share Company, are subject to its direction and control.

2.) That some time subsequent to the organization of the defendants American Power & Light Company, Electric Power & Light Corporation and National Power & Light Company, defendant Electric Bond and Share Company prepared and adopted a standard form of service contract, hereinafter more particularly described, and through the exercise of its control over said defendants, caused 93
them to enter into such contracts with it. Pursuant to said contracts, defendant Electric Bond and Share Company undertook to perform and did perform for said defendants substantially all the activities necessary to the conduct of their corporate business and functions. That some time subsequent to the passage of the Act, defendant Electric Bond and Share Company caused to be organized Ebasco Services Incorporated, all of the

outstanding capital stock of which is owned and
94 held by Electric Bond and Share Company. That Electric Bond and Share Company thereupon assigned to Ebasco Services Incorporated all of its right, title and interest in the service contracts hereinabove referred to. That subsequent to the date of such assignments, Electric Bond and Share Company, acting through Ebasco Services Incorporated, has continued to perform all of the services which it undertook to perform in said service contracts.

3.) That the defendants American Power & Light
95 Company, Electric Power & Light Corporation, National Power & Light Company and American Gas and Electric Company own all or substantially all of the voting securities of public utility operating companies and of holding companies which in turn own all or substantially all of the outstanding voting securities of public operating companies, all as more specifically alleged in paragraphs IX, X, XI, XII and XIII hereof. That the securities so owned by said defendants were either transferred to them by Electric Bond and Share Company or were purchased by them at the instance of the
96 Electric Bond and Share Company. That said defendants perform no functions with respect to the public utility and holding companies thus owned, except to serve as mediums through which defendant Electric Bond and Share Company may publicly finance the operations of the subsidiary public utility companies of the Electric Bond and Share System, and through which defendant Electric Bond and Share Company, with a comparatively small investment of its own, may dominate and

control the operations of these subsidiary public utility companies. That since their organization by it, defendant Electric Bond and Share Company has effectively used said defendants as instrumentalities for completely dominating and controlling the operations of the public utility companies of the system. That as a consequence of this domination and control, all important questions of business policy and personnel arising in the operations of the public utility companies of the Electric Bond and Share System are determined by defendant Electric Bond and Share Company, and all of these subsidiary public utility companies are controlled and operated as component members of a single system. 97 98

4.) That defendant Electric Bond and Share Company has also for many years controlled and directed, and now continues to control and direct the operations of the subsidiary public utility companies of the system, other than subsidiaries of American Gas and Electric Company, by means of supervisory services rendered to these subsidiary public utility companies; that defendant Electric Bond and Share Company has adopted a standard form of service contract for public utility companies, hereinafter more particularly set forth, covering all important aspects of the operations of its subsidiary public utility companies; that it has caused all or substantially all of its subsidiary public utility companies in the United States, other than subsidiaries of American Gas and Electric Company, to negotiate and enter into such service contracts, in accordance with which defendant Electric Bond and Share Company has maintained an 99

elaborate service organization through which it has
100 in fact regularly and continuously performed all the services set forth in the standard service contract, and other services as well, for these public utility companies. That subsequent to the passage of the Public Utility Holding Company Act of 1935 and the organization of Ebasco Services Incorporated, as hereinabove alleged, Electric Bond and Share Company assigned to Ebasco Services Incorporated its service contracts with said subsidiary public utility companies. That either in its own name or through Ebasco Services, Incorporated, defendant Electric Bond and Share Com-
101 pany now continues and will continue, to perform all the services set forth in the standard form of service contract and many other services for all or substantially all of its subsidiary public utility companies in the United States, other than subsidiaries of American Gas and Electric Company, and continues and will continue thus to supervise, direct, and control in all important aspects, the operations of these subsidiary public utility companies.

102 5.) That defendant Electric Bond and Share Company, by means of its voting control, its supervisory services, and other means, as hereinabove set forth, has controlled, supervised, and directed the business and affairs of its subsidiary public utility companies which are engaged in the interstate transmission of electric energy, and natural and manufactured gas, as hereinabove alleged; that defendant Electric Bond and Share Company has caused its subsidiary holding companies to purchase

controlling interests in public utility companies in part for the purpose of facilitating and developing 103
the interstate transmission of natural and manufactured gas and electric energy; that defendant Electric Bond and Share Company has constructed or caused its subsidiary utility companies to construct utility properties for the interstate transmission of gas and electric energy, has caused the purchase and construction of utility properties for the generation of electric energy and the development of natural and manufactured gas to be transmitted in interstate commerce, and has caused and facilitated the development of interconnections between utility properties for the interstate trans- 104
mission of gas and electric energy; and that by reason of these activities, defendant Electric Bond and Share Company, both in its own corporate capacity and through the corporate organizations of the other holding companies named defendants herein, is engaged and will continue to be engaged in the transmission in interstate commerce of electric energy and manufactured and natural gas.

6.) That defendant American Gas and Electric Company actively dominates and controls its sub- 105
sidiary public utility companies through its ownership of substantially all of their voting securities and through other means hereinafter set forth; that defendant American Gas and Electric Company maintains a service organization through which it renders to all or substantially all of its subsidiary public utility companies, supervisory services covering all important aspects of their business operations; that defendant American Gas and Electric Company in rendering these services

supervises, directs and controls the business, affairs
106 and operations of its subsidiary public utility companies which are engaged in the transmission of electric energy in interstate commerce, as hereinabove alleged; that by virtue of these activities, defendant American Gas and Electric Company is itself actively engaged and will continue to be actively engaged in the interstate transmission of electric energy.

7.) That defendants, Power Securities Corporation, Idaho Power Company, Utah Power and Light Company, United Gas Public Service Com-
107 pany, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company, Pacific Power and Light Company, and Lehigh Power Securities Corporation, are engaged in the interstate transmission of electric energy or natural or manufactured gas, either themselves or through the instrumentality of public utility companies all or substantially all of whose voting securities are owned by said defendants.

XVII.

108 That the defendant Electric Bond and Share Company, in the ordinary course of its business, by constant use of the mails or means or instrumentalities of interstate commerce is or will be continuously engaged, either in its own name or through the instrumentality of Ebasco Services, Incorporated, in the performance of the existing service contracts with American Power & Light Company, Electric Power & Light Corporation and National Power & Light Company. That in said

contracts, defendant Electric Bond and Share Company, in its own name or through Ebasco Services, 109
Incorporated, for an agreed rate of compensation, based on the gross earnings of the supervised holding company and its subsidiaries, undertakes to furnish and the supervised holding company agrees to accept and pay for full and complete services of a management, financial, auditing, engineering and secretarial nature. That more specifically such contracts provide:

(1) *As to Executive Officers*—That the Electric Bond and Share Company will lend the assistance of its executive officers to aid in 110
the development of general policies and the solution of major problems arising in connection with the affairs and management of the supervised holding company.

(2) *As to Officers and Directors*—That the Electric Bond and Share Company will make available its executives and other members of its organization for service as directors and officers of the supervised holding company.

(3) *As to Office Accommodation and Staff*— 111
That the Electric Bond and Share Company will provide office accommodation and staff personnel in New York for the transaction of business for the supervised holding company.

(4) *As to Sponsors*—That the members of the staff of Electric Bond and Share Company will serve as sponsors, sponsor engineers, and sponsor accountants for the operating subsidi-

aries of the supervised holding company, and
112 will be available for consultation, advice and assistance in the interest of the systematic development and operation of the supervised holding company's system as a whole.

(5) *As to Capital and Corporate Matters*—That the Electric Bond and Share Company will assist in the drafting, printing, creation, issuance, listing, delivery, registration, transferring and retirement of the securities of the supervised holding company, and assist in other important corporate actions.
113

(6) *As to Secretarial Service*—That the Electric Bond and Share Company will direct, to the extent desired or required, the calling of stockholders, directors and committee meetings of the supervised holding company, will compile information and programs of action for such meetings, cooperate in the drafting of resolutions, and that the members of the Elecbond and Share Company who are officers of the supervised holding company will maintain records of and make notifications of actions
114 taken at such meetings.

(7) *As to Tax Services*—That the Electric Bond and Share Company will advise as to accounting for Federal taxation; will handle the preparation and filing of tax returns and supporting schedules, will assist in presenting claims for refunds, abatements, and adjustments of taxes; will assist in cooperation with paying agents in accounting and reporting in-

terest payments; will keep informed as to tax law, and will assist in the preparation and 115
filing of state and local tax returns.

(8) *As to Financial Service*—That the Electric Bond and Share Company will advise upon permanent financing, will aid in obtaining temporary financing, and will arrange for the employment of temporary surplus cash.

(9) *As to Funds and Securities*—That the officers of Electric Bond and Share Company who are also officers of the supervised holding Company will attend to the receipt and dis- 116
bursement of funds, in connection with which Electric Bond and Share Company will procure lists of stockholders, do all the clerical work incident to the preparation and mailing of dividend checks, and arrange for the filing of government reports; and that Electric Bond and Share Company will provide safety deposit facilities for such securities as are kept in New York and will transmit and deliver them as directed.

(10) *As to Accounting and Analysis*—That 117
the Electric Bond and Share Company will do all bookkeeping, accounting, and auditing work for the supervised holding company, except annual or special audits which are made by outside auditors; and that Electric Bond and Share Company will do all work incident to vouchering for payment of and pay invoices, reconcile bank accounts, furnish the supervised holding company with monthly statements

thereof, and prepare analyses of accounts for
118 the officers of the supervised holding company.

(11) *As to Statistics and Reports*—That Electric Bond and Share Company will draft and submit to the supervised holding company reports to be sent to stockholders, interested bankers, and financial publications; and will submit to the supervised holding company reports of interest concerning other public utility companies.

(12) *As to Security Listings*—That Electric
119 Bond and Share Company will prepare appropriate applications for the listing of securities on stock exchanges and will prepare periodical financial statements in connection therewith, and will assist in any hearings required by stock exchange officers.

(13) *As to Subsidiary Holding Companies*—That Electric Bond and Share Company when requested by the supervised holding company will perform the same supervision and general services as hereinabove set forth for any of
120 the subsidiary holding companies of the supervised holding company.

(14) *As to Security Sales*—That Electric Bond and Share Company, for an additional compensation based upon the amount of securities sold, will except when otherwise directed, take charge of the sale at wholesale of securities for the supervised holding company and its holding company subsidiaries; super-

vise the preparation of mortgages, indentures and trust agreements; prepare and distribute statements for the information of interested public authorities, bankers and investors; be prepared to answer legitimate questions from investing interests; and will endeavor to maintain a favorable consideration by the investing public of the securities of the supervised holding company and its subsidiary holding companies. 121

(15) That Electric Bond and Share for an additional compensation based upon the amount of securities sold will direct sales of such stock of the supervised holding companies and of its subsidiary holding companies as they wish to sell to the consumers in the territory served by operating subsidiaries. 122

(16) That Electric Bond and Share Company will aid in the preparation of special reports required by state public utilities commissions and "blue sky" laws and for the qualification of securities as legal investments for savings banks, trustees, and other regulated financial institutions. 123

(17) *As to Acquisition and Exchange of Properties*—That Electric Bond and Share Company for an additional compensation will provide expert engineers, statisticians, auditors, accountants, and rate and corporate specialists to aid in the acquisition of new properties and companies, and aid in the sale or exchange of properties.

(18) That for a compensation to be agreed
124 upon, Electric Bond and Share Company to the best of its ability will carry out any request for services not contemplated by the contract.

XVIII

That the defendant Electric Bond and Share Company, in the ordinary course of its business, by constant use of the mails or means or instrumentalities of interstate commerce, in its own name or through Ebasco Services, Incorporated, is and will be continuously engaged in taking steps in the
125 performance of its existing service contracts with the utility companies in the Electric Bond and Share System. That in such contracts, defendant Electric Bond and Share Company, in its own name or through Ebasco Services, Incorporated, for an agreed rate of compensation based upon total monthly operating revenues, undertakes to render extensive services, and the operating public utility agrees to accept such services and to pay for the same. That more specifically such contracts provide:

126 1. *As to Executive Officers*—That Electric Bond and Share Company will lend the assistance of its executive officers to aid in the development of general policies and the solution of major problems arising in connection with the operation and management of the supervised operating company.

2. *As to Supplying of Officers and Directors* —That Electric Bond and Share Company will

make available its executives and other members of its organization for service as directors and officers of the supervised operating company. 127

3. *As to Sponsors*—That Electric Bond and Share Company will provide one or more of its operating specialists to serve as sponsor for the supervised operating company, which sponsor will visit the properties as frequently as may be necessary for a comprehensive knowledge of the situation and local problems of the operating company; that one of the senior engineers of Electric Bond and Share Company 128 will serve as sponsor engineer for the supervised operating company in which capacity he will visit its properties from time to time; that one of the senior accountants of Electric Bond and Share Company will serve as sponsor accountant for the operating company in which capacity he will maintain contact therewith through correspondence or by visits.

4. *As to Capital and Corporate Matters*—That Electric Bond and Share Company will assist in the drafting, printing, creation, issuance, listing, delivery, registration, transferring, and retirement of the securities of the supervised operating company; that Electric Bond and Share Company will advise with the officers and counsel of the supervised operating company in administration of legal work. 129

5. *As to Secretarial Service—Corporate Meetings*—That Electric Bond and Share Com-

pany will direct, to the extent desired, the call-
130 ing, notification and recording of stockholders, directors and committee meetings of the supervised operating company; that the Electric Bond and Share Company will assist in the compilation of information, preparation of programs of action, and drafting of appropriate resolutions for such meetings; that upon request, a sponsor or other representative of Electric Bond and Share Company will attend such meetings, to give information and advice on the business and affairs of the supervised operating company.
131

6. *As to Tax Services*—That the defendant Electric Bond and Share Company will advise as to accounting for Federal taxation; will handle the preparation and filing of tax returns and supporting schedules; will assist in presenting claims for refunds, abatements and adjustments of taxes, will assist in cooperation with paying agents of the supervised company in accounting and reporting interest payments; will keep informed as to tax law, and will assist in the preparation and filing of state and local
132 tax returns.

7. *As to Construction Programs, Budgets, Forecasts*—That the Electric Bond and Share Company will advise and assist in formulating a development, construction program, coordinating of current extensions with such program, and preparing annual construction budgets; that in connection with such budgets the Electric Bond and Share Company will

estimate costs, and make recommendations as to necessity and time for contemplated construction; that Electric Bond and Share Company will assist and advise in the preparation of operating budgets and forecasts, covering revenues and expenditures. 133

8. *As to Financial Services*—That Electric Bond and Share Company will advise upon permanent financing, will aid in obtaining temporary financing, and will arrange for the employment of temporary surplus cash.

9. *As to Receipt, Disbursement and Care of Funds*—That the officers of Electric Bond and Share Company who are also officers of the supervised operating company will attend to the receipt and disbursement of such funds of the supervised operating company as are receivable at or disbursed from New York, and in connection therewith Electric Bond and Share Company will procure lists of stockholders, do all the clerical work incident to the preparation and mailing of dividend checks, and arrange for the filing of government reports; and that Electric Bond and Share Company will provide safety deposit facilities for such securities as are kept in New York and will transmit and deliver them as directed. 134 135

10. *As to Accounting and Analyses*—That Electric Bond and Share Company will do all work incident to vouchering for payment, and

will pay such invoices as the supervised operat-
136 ing company desires paid from New York, reconcile New York bank accounts, furnish monthly statements thereof, and prepare analyses of accounts for the officers of the supervised operating company; that the accounting specialists of Electric Bond and Share Company will be available in New York for consultation on all accounting matters, including merchandising and jobbing accounting, utilization of mechanical accounting, office devices, and uniform classification of materials and
137 supplies and control thereof.

11. *As to Statistics and Reports*—That Electric Bond and Share Company will advise and assist in the preparation of reports to be sent to stockholders, interested bankers, and financial publications, and will furnish upon request reports of interest concerning other public utility companies.

12. *As to Stock Exchange Listings*—That Electric Bond and Share Company will assist
138 in the preparation of and arrange for the presentation of applications for the listing of securities, will assist in the preparation of periodical financial statements in connection therewith, and will, when requested, attend and assist in any hearings required by stock exchange officers.

13. *As to Public Relations*—That Electric Bond and Share Company will advise and

collaborate with the officers of the supervised operating company on questions of business policy, and customer, employee, and public relations; that Electric Bond and Share Company will furnish digests of state and federal regulations and laws, and economic, trade, and technical literature, pertaining to the problems of the supervised operating company. 139

14. *As to Personnel*—That, when agreeable to all parties interested, Electric Bond and Share Company will make recommendations for the transfer of personally observed qualified men, from one operating company to another, and that Electric Bond and Share Company will assist in obtaining needed personnel. 140

15. *As to Territorial Development*—That Electric Bond and Share Company will advise and assist in the industrial development of the territory served by the supervised operating company, the extension of services into new territory, and acquisitions of new properties.

16. *As to New Business, Merchandising, and Jobbing*—That Electric Bond and Share Company will assist the development of new business, merchandising, and jobbing departments, will plan and assist in installing of modern equipment and system of report forms for solicitation of new business, will supply data on the requirements of any class of business and on the cost of competitive services, will keep in touch with, and inform the supervised company of manufacturing developments 141

in appliances, and will assist in campaigns
142 for special merchandising activities on particular classes of appliances.

17. *As to Rates*—That rate specialists of Electric Bond and Share Company will be available in New York and will visit the property of the supervised operating company from time to time for consultation on rate problems, that Electric Bond and Share Company will inform the supervised operating company of public utility rates in force throughout the country, of developments in the theory
143 and practice of rate-making, and of rate rulings and decisions, and that Electric Bond and Share Company will counsel and advise in the preparation and presentation of information, studies, and exhibits required for regulating authorities.

18. *As to Consulting Engineering*—That the engineering staff of Electric Bond and Share Company comprises engineering specialists of diversified and extensive experience
144 in technical public utility problems, together with a comprehensive auxiliary organization; that Electric Bond and Share Company keeps informed of public utility engineering developments, making investigations, and conducting research in connection therewith; that Electric Bond and Share Company maintains contact with United States and foreign public utility operations, the activities of technical societies, and with manufacturers of apparatus and equipment; that this organization will be avail-

able in New York for consultation on operation, extensions and development plans; that 145
Electric Bond and Share Company will advise on the cost estimates, designs, and plans of the supervised operating company, will assist in the application to the properties of the holding company of standard designs, types of construction, and methods of operation developed by Electric Bond and Share Company, and will supervise the installation and maintenance of technical and cost records pertaining to properties and operation.

19. *As to Purchasing*—That Electric Bond 146
and Share Company will negotiate volume contracts with manufacturers providing for quantity discounts on purchases of public utility supplies, and equipment, including lamps, motors, transformers, meters, electric and gas appliances, lubricating and insulating oils, electric railway supplies, automobiles, trucks and office equipment; that Electric Bond and Share Company, upon request, will so far as possible, include and supply requirements of the operating company in orders under those 147
volume contracts; that Electric Bond and Share Company will assist in arranging specific purchases, and in general serve as New York purchasing agent; that Electric Bond and Share Company maintains an information service and will make available information on current market data, and other information and data likely to be of assistance.

148 20. *As to Apparatus Exchange*—That for the benefit of all companies similarly served, the Electric Bond and Share Company conducts an apparatus exchange.

21. *As to Traffic*—That Electric Bond and Share Company, when requested, will route and classify shipments, furnish information on routing, classification, insurance in transit, and procedure in filing claims, and checking and auditing of transportation invoices, and will assist in locating and expediting strayed and delayed shipments insofar as this can be
149 done in New York.

22. *As to Factory Information*—That Electric Bond and Share Company, when requested, will advise on the status of factory production, and when necessary, on changes in orders for the improvement of deliveries or other advantages.

23. *As to Insurance*—That Electric Bond and Share Company will assist in making in-
150 vestigations, reports, and proper classifications and reclassifications of insurable property and in preparation of policy forms; that, when requested, Electric Bond and Share Company will negotiate or assist in negotiating insurance for all risks so as to give the supervised operating company the benefit of advantageous terms obtainable because of the aggregate volume of insurance handled by Electric Bond and Share Company.

24. *As to Sale and Marketing of Securities* —That Electric Bond and Share Company, for 151
an additional compensation based upon the amount of securities sold, will, except when otherwise directed, take charge of the sale at wholesale of the securities of the supervised operating company and its controlled companies; will supervise the preparation of mortgages, indentures, and trust agreements and prepare and distribute statements for the information of interested public authorities, bankers and investors; will be prepared to answer legitimate questions from investment 152
interests; and will endeavor to maintain a favorable consideration by the investing public of the securities of the supervised operating company and its controlled companies.

25. That Electric Bond and Share Company for an additional compensation, will direct sales of such stock of the supervised operating company and its controlled companies as they wish to sell to the consumers in the territory served by the companies.

153

26. That Electric Bond and Share Company will aid in the preparation of special reports required by state public utility commissions and "blue sky" laws and for the qualification of securities as legal investments for saving banks, trustees, and other regulated financial institutions.

27. *As to Engineering Services*—That Electric Bond and Share Company for an addi-

tional agreed rate of compensation will, when
154 requested, render special engineering services such as the following: investigations and studies; detailed engineering assistance in interconnecting properties of the supervised company with properties of other companies, purchasing power and gas, and in selling services to other public utility companies and large consumers; appraisals of property; and inspection and tests of purchases.

28. *As to Engineering for Construction*—
155 That Electric Bond and Share Company for an additional agreed rate of compensation will upon request do all engineering required in connection with construction or reconstruction work done by one of the associated construction companies of Electric Bond and Share Company or by a general contractor under the supervision of such associated construction company.

29. *As to Construction*—That Electric Bond and Share Company, when requested,
156 will arrange for a construction contract between the supervised operating company and one of the associated construction companies of Electric Bond and Share Company under which the construction company for an agreed rate of compensation based on percentages of cost will take charge of construction or reconstruction work.

30. *As to Construction Supervision*—That Electric Bond and Share Company when re-

quested will arrange for a construction supervision contract between the supervised operating company and one of the associated construction companies of Electric Bond and Share Company under which the construction company for an agreed rate of compensation based on percentages of construction cost will supervise construction work to be done by a general contractor. 157

31. *As to Special Investigations and Reports*—That Electric Bond and Share Company for an additional, agreed rate of compensation will upon request provide the services of various experts for reports upon new properties, investigations for the industrial development of the territory served, detailed rate studies, detailed new business investigations, and special investigations of important projects and unusual problems, and that Electric Bond and Share Company will supplement such reports with analyses, comments and recommendations. 158

XIX. 159

That Electric Bond and Share Company by virtue of its domination and control over the subsidiary operating companies in the Electric Bond and Share System, and pursuant to the service contracts described in paragraph XVIII hereof, in fact controls and directs the purchasing of, and through the instrumentality of Ebasco Services, Incorporated, purchases, all or substantially all of the

materials, supplies, and equipment required by said
160 subsidiary operating companies with the exception of the subsidiary operating companies of the American Gas and Electric Company; that defendant Electric Bond and Share Company, or Ebasco Services, Incorporated, is a party to written or oral contracts, agreements or understandings with one or more independent manufacturing companies under which Electric Bond and Share Company or Ebasco Services, Incorporated, undertakes to place with such companies orders for all or substantially all of the materials, supplies, and equip-
161 ment that may be required by the subsidiary operating companies which are parties to the service contract described in paragraph XVIII hereof; that in the continual performance of such agreements or understandings, Electric Bond and Share Company, in its own name or through the instrumentality of Ebasco Services, Incorporated, purchases annually for the account of such subsidiary operating companies materials, supplies and equipment valued at more than $50,000,000.00 and causes and will cause substantially all of such materials, supplies, and equipment to be shipped in inter-
162 state commerce from the factory or warehouse of the seller to the purchasing subsidiary operating company.

XX.

That Electric Bond and Share Company, since the passage of the Holding Company Act, caused to be transferred all or substantially all the capital stock of its wholly owned subsidiary, Phœnix Engineering Corporation, to Ebasco Services, Incor-

porated; that defendant Electric Bond and Share Company, through the Phœnix Engineering Corporation, in accord with the arrangement contemplated by the standard form contract for operating public utility companies as hereinabove set forth, in the ordinary course of its business, by use of the mails or means or instrumentalities of interstate commerce, regularly negotiates and enters into construction contracts with operating public utility companies of the Electric Bond and Share Group; and that in such construction contracts, Phœnix Engineering Corporation, for an agreed rate of compensation based upon percentages of cost, undertakes to complete specified construction and reconstruction work, and in connection therewith undertakes to purchase, for the account of the operating company, all necessary materials and equipment, to procure necessary insurance, to keep account of costs and render monthly statements thereof, and upon request to make tests of completed work, and for a trial period conduct operation thereof; that in the performance of these contracts Phœnix Engineering Corporation purchases large quantities of materials and equipment for the account of the operating company, and causes the shipment of said large quantities of materials and equipment across state lines from the place of business of the seller to that of the operating company; that the defendant Electric Bond and Share Company, through the Phœnix Engineering Corporation, in the ordinary course of its business, by constant use of the mails and the means and instrumentalities of interstate com-

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merce, is continually engaged and will be continu-
166 ously engaged in taking steps in the performance of such construction contracts.

XXI.

1. That defendant Electric Bond and Share Company, in the ordinary course of its business by frequent use of the mails and the means and instrumentalities of interstate commerce, has engaged in the performance of financial services for defendant American Gas and Electric Company, and for the holding companies and utility com-
167 panies in the American Gas and Electric System, including the sale at wholesale and retail of securities of such companies, which securities were caused by Electric Bond and Share Company to be offered for sale and widely distributed and sold in interstate commerce; that defendant Electric Bond and Share Company, or its wholly owned subsidiary, Ebasco Services, Incorporated, or both, in the normal course of business, and by use of the mails and the means and instrumentalities of interstate commerce, are taking and will continue to
168 take steps in the performance of such financial services.

XXII.

That defendant American Gas and Electric Company, in the ordinary course of its business by constant use of the mails and the means and instrumentalities of interstate commerce, is continuously engaged and will continue to engage in taking steps in the performance of a complete range of

supervision and management services for its subsidiary holding companies and operating public 169
utility companies, including financial, accountng, auditing, commercial, purchasing, valuation, engineering, insurance, statistical and other services.

That the defendant American Gas & Electric Company has established and maintains at its offices in New York City nine or more service departments, employing approximately 300 persons, who are engaged in the performance of supervisory and management services for the holding companies and public utility companies in the American Gas & Electric System. That a sub- 170
stantial portion of the corporate expense of the defendant American Gas & Electric Company is incurred in the maintenance and operation of its servicing departments. That in consideration of an agreed rate of compensation paid to it, the American Gas & Electric Company, through its servicing departments, performs the following services for the holding companies and public utility companies in the American Gas and Electric System:

1. *Executive Offices*—Supplies a complete 171
staff of corporate officers to each of the subsidiary companies. Such corporate officers are chosen from among the officers and directors of the defendant American Gas & Electric Company.

2. *Legal Staff*—Cooperates with the officers and attorneys of the subsidiary companies in examining all laws relating to the business

of such companies; prepares and records mort-
172 gages, negotiates and prepares contracts, examines and prepares deeds, prepares applications for the qualification of securities and applications to and protests before regulatory bodies and tax commissions, and furnishes legal representation upon other legal problems of the subsidiary companies.

3. *Purchasing staff* — Purchases substantially all materials, supplies and equipment for the subsidiary companies, relieving these companies of all details after they have requi-
173 sitioned their needs to this department.

4. *Auditing and accounting department*— Checks and audits the journal entries, general accounts, consumers' accounts receivable, inventory, freight bills and classifications of the subsidiary companies.

5. *Security department*—Prepares and mails all dividend checks of the subsidiary companies, keeps the records of the stock-
174 holders of these companies by daily posting stock transfers, prepares new issues of bonds for execution and delivery, and arranges for the payment and cremation of coupons.

6. *Tax department*—Prepares for the subsidiary companies all reports for tax and regulatory commissions, including Federal income tax reports, and represents the subsidiary companies on all contested tax matters.

7. *Insurance department*—Inspects the property of the subsidiary companies to determine its valuation, negotiates for and places insurance coverage on this property and handles the preparation and presentation of all claims. Also coordinates plans for accident prevention among the subsidiary companies. 175

8. *Commercial department*—Prepares for the subsidiary companies' rate structures, organizes and directs the solicitation of all new business, advertising, demonstrations, and the conduct of sales schools for the employees of the subsidiary companies. 176

9. *Engineering department*—Makes surveys of the operating conditions of the subsidiary companies, including efficiency of combustion, cost of labor and transmission, interconnections and relay systems, and serves as instructors of the operating personnel of the subsidiary companies.

10. Other departments whose duty it is to keep statistical and other records for the common use of the subsidiary companies in order to facilitate an interchange of equipment and of experience in methods of operation. 177

XXIII.

That defendant Electric Bond and Share Company, in performing its obligations under the service, sales and construction contracts described in

paragraphs XVII and XVIII hereof, either in its
178 own name or through its wholly owned subsidiaries, Ebasco Services, Incorporated, and Phoenix Engineering Corporation, since December 1, 1935, has engaged and will continue to engage in a business in interstate commerce within the meaning of Section 4 (a) (5) of the Act. That these contracts contemplate and their performance requires and depends upon, continuous and regular intercourse in interstate commerce and frequent transportation in interstate commerce of information in the form of books, periodicals, apparatus, papers, pamphlets,
179 reports and forms between offices of the Electric Bond and Share Company in New York City and the client subsidiary companies in 32 states other than the State of New York. That in these contracts, defendant Electric Bond and Share Company undertakes to and does send, as frequently as may be necessary, from its principal offices in New York to the companies served, sponsors, operating specialists, and engineers to confer, advise and assist with respect to the problems of the operating companies, and that this obligation contemplates and its performance necessitates transportation in in-
180 terstate commerce. That the accounting, financial, legal, and other services performed pursuant to said contracts from the offices of Electric Bond and Share Company in New York City by its officers and employees in said city to the client companies in other states, contemplate and depend for their accomplishment, upon, and are performed by means of, interstate communication and interstate commerce. That in accordance with the provisions of the contracts with its client subsidiary companies,

defendant Electric Bond and Share Company, either in its own name or through its wholly owned sub- 181
sidiary, Ebasco Services, Incorporated, negotiates contracts and itself enters into contracts for the sale of equipment and supplies to the client companies, which contracts contemplate, and the performance of which requires and depends upon, and which are performed by means of, transportation in interstate commerce. That in accordance with the provisions of its contracts with client subsidiary companies, defendant Electric Bond and Share Company, either in its own name or through its wholly owned subsidiary, Ebasco Services, Incorporated, supervises the transporation in interstate 182
commerce of equipment and supplies to client companies. That in accordance with the terms of contracts between itself and client subsidiary companies, defendant Electric Bond and Share Company, either in its own name or through its wholly owned subsidiary, Ebasco Services, Incorporated, conducts an apparatus exchange for the purchase, sale and exchange of second-hand apparatus and materials among client companies and between client companies and other companies, and that the conduct of such apparatus exchange contemplates, 183
and requires shipments of apparatus and materials in interstate commerce. That defendant Electric Bond and Share Company, either in its own name or through its wholly owned subsidiary, Ebasco Services, Incorporated, in accordance with the terms of its contracts with client subsidiary companies, as their business needs require, negotiates and takes charge of the sale and distribution in interstate commerce of the securities of client companies and

directs from its New York offices, through the chan-
184 nels of interstate commerce, the sale of the securities of client companies to their customers in the territories which they serve. That defendant Electric Bond and Share Company, either in its own name or through its wholly owned subsidiaries, Ebasco Services, Incorporated, or Phoenix Engineering Corporation, regularly purchases and ships materials, supplies and equipment in interstate commerce as contemplated in, and required by, the construction contracts negotiated and entered into as hereinabove set forth. That defendant Electric Bond and Share Company, either in its own
185 name or through its wholly owned subsidiaries, Ebasco Services, Incorporated, and Phoenix Engineering Corporation, receives compensation from its client subsidiary companies for the performance of the services described in this paragraph, in accordance with the terms of the standard contract as hereinabove set forth. That the compensation so received constitutes a substantial part of the earnings of defendant Electric Bond and Share Company. That the performance for compensation of the services described in this paragraph constitutes
186 a business in interstate commerce, and that defendant Electric Bond and Share Company, both in its own names and through its wholly owned subsidiaries Ebasco Services, Incorporated, and Phoenix Engineering Corporation, although not registered under the Act, will continue to engage in such business in interstate commerce in violation of Section 4 (a) (5) of the Act.

XXIV

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That defendant American Gas and Electric Company, in the ordinary course of its business, is regularly engaged in rendering supervision, management and construction services for its subsidiaries, as hereinabove alleged, and that the performance of such services requires and causes regular and continuous intercourse in interstate commerce and transportation in interstate commerce of apparatus, materials, supplies, securities, books, pamphlets, periodicals, reports, papers and forms. That the performance of these services by defendant American Gas and Electric Company constitutes engaging 188
in business in interstate commerce, and that the defendant American Gas and Electric Company, although not registered under the Act, is engaging and will continue to engage in such business in interstate commerce in violation of section 4 (a) (5) of the Act.

XXV

WHEREFORE, pursuant to the provisions of section 18 (f) and (g) of Title I of the Public Utility Holding Company Act of 1935, the plaintiff 189
respectfully prays:

1.) That each of the defendants be required to answer this amended and supplemental bill of complaint.

2.) That each and all of the defendants, by appropriate order of this court, be enjoined from violating any of the provisions of Section 4 (a) of the Act, and be required to register pursuant to the provisions of Section 5 of said Act.

3.) For such other and further relief as the
190 court may deem appropriate in the premises.

JOHN J. BURNS
General Counsel, Securities and
Exchange Commission.

ROBERT H. JACKSON
Special Counsel.
Solicitors for the Plaintiff

Office and Post Office Address
Room 1024, Securities and
191 Exchange Commission,
Washington, D. C.
or
120 Broadway, New York City.

EXHIBIT A. ANNEXED TO AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT

This exhibit contains Rule 3-A-2 of the Commission which Rule, as amended, March 10, 1936, is set out in Exhibit 1 to the Stipulation of Facts.

192

Notice of Motion

(Title of Court and Cause) 193

SIRS:

PLEASE TAKE NOTICE that upon the bill of complaint in the above entitled action and upon the annexed petition of Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, Power Securities Corporation, Idaho Power Company, Utah Power & Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska 194
Power Company, Pacific Power & Light Company, The Washington Water Power Company, Lehigh Power Securities Corporation, Pennsylvania Power & Light Company and Easton Consolidated Electric Company, the undersigned will move this Court at a stated term thereof to be held in the Old Post Office Building at Park Row, in the Borough of Manhattan, City of New York, on the 6th day of December, 1935, or as soon thereafter as counsel can be heard, for an order granting leave to the petitioners to intervene herein as parties defendant and to file answers and cross bills herein and for 195
such other and further relief as to the Court may seem just and proper.

Notice of Motion

Dated, New York, N. Y., November 29, 1935.

196

Yours, etc.,

SIMPSON THACHER & BARTLETT
Attorneys for Petitioners,
Office & P. O. Address,
120 Broadway,
Borough of Manhattan,
City of New York.

TO:

JOHN J. BURNS, Esq.,
197 General Counsel,
Securities and Exchange Commission,
120 Broadway,
New York, N. Y.

198

Petition for Intervention of Appalachian Electric Co., et al.

199

(Title of Court and Cause)

To the Honorable Judges of the United States District Court for the Southern District of New York:

The petition of Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, Power Securities Corporation, Idaho Power Company, Utah Power & Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company, Pacific Power & Light Company, The Washington Water Power Company, Lehigh Power Securities Corporation, Pennsylvania Power & Light Company and Easton Consolidated Electric Company, respectfully shows to this Court and alleges:

200

I.

Appalachian Electric Power Company is a corporation duly organized and existing under and by virtue of the laws of the State of Virginia and is a resident and citizen of the State of Virginia with its principal office and corporate domicile in the City of Roanoke in said state.

201

The Ohio Power Company is a corporation duly organized and existing under and by virtue of the laws of the State of Ohio and is a resident and citizen of the State of Ohio with its principal office and corporate domicile in the City of Newark in said State.

202 The Scranton Electric Company is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and is a resident and citizen of the State of Pennsylvania with its principal office and corporate domicile in the City of Scranton in said State.

Atlantic City Electric Company is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey and is a resident and citizen of the State of New Jersey with its principal office and corporate domicile in Atlantic City in said State.

203 Power Securities Corporation is a corporation duly organized and existing under and by virtue of the laws of the State of New Hampshire and is a resident and citizen of the State of New Hampshire with its corporate domicile in the City of Concord in said State of New Hampshire, but with its principal office in the City of New York in the State of New York.

Idaho Power Company is a corporation duly organized and existing under and by virtue of the laws of the State of Maine and is a resident and

204 citizen of the State of Maine with its corporate domicile in the City of Augusta in said State of Maine, but with its principal office in the City of Boise in the State of Idaho.

Utah Power & Light Company is a corporation duly organized and existing under and by virtue of the laws of the State of Maine and is a resident and citizen of the State of Maine with its corporate domicile in the City of Augusta in said State of Maine, but with its principal office in the City of Salt Lake City in the State of Utah.

United Gas Public Service Company is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and is a resident and citizen of the State of Delaware with its corporate domicile in the City of Dover in said State of Delaware, but with its principal office in the City of Houston in the State of Texas. 205

Houston Gulf Gas Company is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and is a resident and citizen of the State of Delaware with its corporate domicile in the City of Wilmington in said State of Delaware, but with its principal office in the City of Houston in the State of Texas. 206

The Montana Power Company is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey and is a resident and citizen of the State of New Jersey with its corporate domicile in the City of Newark in said State of New Jersey, but with its principal office in the City of Butte in the State of Montana.

Nebraska Power Company is a corporation duly organized and existing under and by virtue of the laws of the State of Maine and is a resident and citizen of the State of Maine with its corporate domicile in the City of Augusta in said State of Maine, but with its principal office in the City of Omaha in the State of Nebraska. 207

Pacific Power & Light Company is a corporation duly organized and existing under and by virtue of the laws of the State of Maine and is a resident and citizen of the State of Maine with its corporate domicile in the City of Augusta in said State

of Maine, but with its principal office in the City of Portland in the State of Oregon.

The Washington Water Power Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Washington and is a resident and citizen of the State of Washington with its principal office and corporate domicile in the City of Spokane in said State.

Lehigh Power Securities Corporation is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and is a resident and citizen of the State of Delaware with its corporate domicile in the City of Wilmington in said State of Delaware; but with its principal office in the City of New York in the State of New York.

Pennsylvania Power & Light Company is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and is a resident and citizen of the State of Pennsylvania with its principal office and corporate domicile in the City of Allentown in said State.

Easton Consolidated Electric Company is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey and is a resident and citizen of the State of New Jersey with its corporate domicile in the City of Camden in said State of New Jersey, but with its principal office in the City of Allentown, in the State of Pennsylvania. Easton Consolidated Electric Company is a subsidiary of Lehigh Valley Transit Company which is a corporation duly organized and existing under and by virtue of the laws of Pennsylvania. On October 30, 1935, said Lehigh Valley Transit

Company filed a petition in the United States 211
District Court for the Eastern District of Pennsylvania under Section 77B of the Bankruptcy Act, which petition has been approved by said Court and said proceeding is still pending. On November 25, 1935 said Court duly entered its order authorizing Easton Consolidated Electric Company to join in a suit of this character.

II.

Heretofore on or about the 26th day of November, 1935, the above entitled action was commenced by 212
the Securities and Exchange Commission against the defendants, Electric Bond and Share Company, American Gas and Electric Company, American Power & Light Company, Electric Power & Light Company, National Power & Light Company and United Gas Corporation, in which the plaintiff prays an order of this Court requiring each and all of the defendants to register under Section 5 of Title I of that certain Act of Congress (Public No. 333-74th Congress—S. 2796) entitled "An Act to provide for control and regulation of public-utility holding companies, and for other purposes", 213
approved August 26, 1935, which Title I in Section 33 thereof is designated "Public Utility Holding Company Act of 1935" and for brevity may be sometimes hereinafter referred to as the "Holding Company Act" or simply as the "Act", and otherwise to comply with the provisions of said Act. By reason of the facts hereinafter set forth your petitioners have an interest adverse to plaintiff in the subject of this action, which interest will be

214 affected by any decree which may be entered herein.

III.

Section 2 (a) (8) of the Holding Company Act provides " 'Subsidiary company' of a specified holding company means—(A) any company 10 per centum or more of the outstanding voting securities of which are directly or indirectly owned, controlled or held with power to vote, by such holding company (or by a company that is a subsidiary company of such holding company by virtue of this clause * *)
215 unless the Commission, as hereinafter provided, by order declares such company not to be a subsidiary company of such holding company * * *". The words "subsidiary" or "subsidiary company" as hereinafter used mean, a subsidiary or subsidiary company as thus defined.

Each petitioner is a subsidiary company of Electric Bond and Share Company and of one or more of the other defendants herein. Ten per centum or more of the outstanding securities of each of the petitioners is owned, controlled and held with power
216 to vote, by one of said defendants or by a company that is a subsidiary company of one or more of said defendants. None of the petitioners has applied or is entitled to apply to the Commission for an order declaring that it is not a subsidiary company of one or more of the defendant holding companies and no such order has been made.

Petitioners Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company and Atlantic City Electric Company are subsidiary companies of defendant Ameri-

can Gas and Electric Company and of defendant 217
Electric Bond and Share Company. Defendant Electric Bond and Share Company owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of defendant American Gas and Electric Company. Defendant American Gas and Electric Company owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of each of said petitioners.

Petitioners Power Securities Corporation, Idaho Power Company and Utah Power & Light Company are subsidiary companies of defendant Electric Power & Light Corporation and defendant 218
Electric Bond and Share Company. Defendant Electric Bond and Share Company owns, controls and holds with power to vote, 10 per centum or more of the outstanding securities of defendant Electric Power & Light Corporation. Defendant Electric Power & Light Corporation owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of Power Securities Corporation and Utah Power & Light Company. Power Securities Corporation 219
owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of Idaho Power Company.

Petitioners United Gas Public Service Company and Houston Gulf Gas Company are subsidiary companies of defendant Electric Bond and Share Company, defendant Electric Power & Light Corporation and defendant United Gas Corporation. Defendant Electric Bond and Share Company owns,

220 controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of Electric Power & Light Corporation. Electric Power & Light Corporation owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of defendant United Gas Corporation. United Gas Corporation owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of United Gas Public Service Company. United Gas Public Service Company owns, controls and holds with power to vote, 10 per centum or more
221 of the outstanding voting securities of Houston Gulf Gas Company.

Petitioners The Montana Power Company, Nebraska Power Company, Pacific Power & Light Company and The Washington Water Power Company are subsidiary companies of defendant Electric Bond and Share Company and defendant American Power & Light Company. Defendant Electric Bond and Share Company owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of Amer-
222 ican Power & Light Company. American Power & Light Company owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of The Montana Power Company, Nebraska Power Company, Pacific Power & Light Company and The Washington Water Power Company.

Petitioners Lehigh Power Securities Corporation, Pennsylvania Power & Light Company and Easton Consolidated Electric Company are subsidiary com-

panies of defendant Electric Bond and Share Company and defendant National Power & Light Company. Defendant Electric Bond and Share Company owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of National Power & Light Company. National Power & Light Company owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of Lehigh Power Securities Corporation. Lehigh Power Securities Corporation owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of Pennsylvania Power & Light Company and Lehigh Valley Transit Company. Lehigh Valley Transit Company owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of Easton Consolidated Company. 223 224

IV.

Each petitioner is a "Holding company" as defined in paragraph (7) of Section 2 (a) of said Holding Company Act. Each petitioner owns, controls and holds with power to vote 10 per centum or more of the outstanding voting securities of one or more companies which is likewise a "Holding company", as defined in said section, or is a "Public-utility company" as defined in Section 2(a) (5) of said Act, to-wit: 225

Appalachian Electric Power Company owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of Kentucky and West Virginia Power Company, Inc.,

226 a Kentucky Corporation, and Kingsport Utilities, Incorporated, a Virginia corporation.

The Ohio Power Company owns, controls and holds with power to vote, 10 percentum or more of the outstanding voting securities of Beech Bottom Power Company, Inc., a West Virginia corporation.

The Scranton Electric Company owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of Stanton Operating Company, a Pennsylvania corporation.

227 Atlantic City Electric Company owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of Deepwater Operating Company, a New Jersey corporation.

Power Securities Corporation owns, controls and holds with power to vote, 10 percentum or more of the outstanding voting securities of petitioner Idaho Power Company.

Idaho Power Company owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of Nevada Power

228 Company, an Idaho corporation, and Salmon River Power & Light Company, a Washington corporation.

Utah Power & Light Company owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of Utah Light and Traction Company, a Utah corporation, The Western Colorado Power Company, a Colorado corporation, and Bountiful Light and Power Company, a Utah corporation.

United Gas Public Service Company owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of United Production Corporation, a Delaware corporation, Southern Gas & Fuel Company, a Florida corporation, Compania Mexicana de Gas S. A., a Mexican corporation, Southern Gas Utilities, Inc., a Delaware corporation, Northern Texas Utilities Company, a Delaware corporation, Natural Gas Co., Inc., a Louisiana corporation, Monroe Gas Company, a Louisiana corporation and petitioner Houston Gulf Gas Company. 229

Houston Gulf Gas Company owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of Houston Gas and Fuel Company, a Texas corporation. 230

The Montana Power Company owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of Idaho Transmission Company, a Montana corporation.

Nebraska Power Company owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of Citizens Power & Light Company, a New Jersey corporation.

Pacific Power & Light Company owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of Inland Power & Light Company, an Oregon corporation. 231

The Washington Water Power Company owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of Chelan Electric Company, a Washington corporation.

232 Lehigh Power Securities Corporation owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of petitioner Pennsylvania Power & Light Company and of Lehigh Valley Transit Company, a Pennsylvania corporation.

Pennsylvania Power & Light Company owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of the following Pennsylvania corporations, to wit: Lehighton Electric Light and Power Company, Stan-
233 ton Operating Company and Conestoga Transmission Company.

Easton Consolidated Electric Company owns, controls and holds with power to vote, 10 per centum or more of the outstanding voting securities of The Edison Illuminating Company of Easton, a Pennsylvania corporation.

V.

Being advised by counsel and believing that the Holding Company Act is wholly unconstitutional and void and of no effect none of the petitioners
234 proposes or intends voluntarily to register as a "Holding company" as provided by Section 5 of the Act, or otherwise or voluntarily to subject itself or its properties or business to the asserted jurisdiction of the Commission involved in such registration.

VI.

Some of the petitioners, as holding companies, are entitled to apply for exemption from the pro-

visions of the Holding Company Act under Section 3 thereof. None of the petitioners, however, is entitled to apply for exemption as a subsidiary of one or more of the defendant holding companies. By the terms of said Act, as hereinafter fully set forth, petitioners would be, as subsidiaries, fully subject to the jurisdiction of the Securities and Exchange Commission, its orders, rules and regulations if this Court should order defendant holding companies to register under Section 5 of the Act, so that exemption of the petitioners as themselves "Holding companies" would be of no value to them. 235 236

VII.

Each of the petitioners, *as a subsidiary company of one or more of defendant holding companies,* has a direct interest in the subject matter of this action which interest will be vitally affected by any decree entered by this Court herein.

If the Court should order the defendant holding companies to register under Section 5 of the Holding Company Act each of the petitioners would be and become, as hereinabove alleged, fully subject to the jurisdiction of the Securities and Exchange Commission, its orders, rules and regulations, in the following manner: 237

Immediately upon said registration and in consequence thereof, it would be and become unlawful by the terms of said Holding Company Act for any of the petitioning companies, *without the prior approval of the Securities and Exchange Commission, or in contravention of any rule, regulation or order from time to time by it deemed necessary or*

238 *appropriate*: (1) to issue or sell any long term security (which is defined in Section 2 (a) (16) to include any note, draft, stock, bond, debenture, receiver's or trustee's certificate or certificate of deposit for a security) of any such company (Section 6 (a)); (2) to exercise any privilege or right to alter the priority, preference, voting power or other right of the holders of any outstanding security of such company (Section 6 (a)); (3) to acquire, directly or indirectly, any securities or utlity assets or any other interest in any business (Section 9 (a) (1)); (4) to lend or extend its
239 credit to or indemnify any company in the same holding company system (Section 12 (b)); (5) to declare or pay any dividend on any security of such company or to acquire, retire or redeem any security of such company (Section 12 (c)); (6) to solicit any proxy, power of attorney, consent or authorization regarding any security of such company or a subsidiary company thereof (Section 12 (e)); (7) to negotiate, enter into or take any step in the performance of any transaction not otherwise unlawful under said Act with any company in the
240 same holding company system or with any affiliate of a company in such holding company system (Section 12 (f)); or 8) to keep its accounts, correspondence, memoranda, papers, books and others records (Section 15 (a) and (e)).

Said Holding Company Act further provides, in Section 13 (b), that after April 1, 1936, it shall be unlawful for any subsidiary company of a registered holding company to take any step in the performance of any service, sales or construction contract with an associate company, except in accordance

with such terms and conditions and subject to such limitations and prohibitions as the Commission shall prescribe. Further control of the Commission over the petitioners, if the defendant holding companies are ordered to register, is provided for in other sections of the Act, particularly Sections 15 to 29, inclusive, under which the Commission is authorized to prescribe accounting systems for subsidiary companies of registered holding companies; to make minute examinations of all correspondence, memoranda, papers, books and records of subsidiary companies of registered holding companies; to investigate the business and financial conditions and practices of subsidiary companies of registered holding companies; to compel attendance of witnesses; to require the production of books, papers, correspondence, memoranda, contracts, agreements or other records which the Commission deems relevant and material; and to bring suits to enforce compliance with the provisions of the Act applicable to subsidiary companies of registered holding companies. 241 242

If the defendant holding companies are ordered by this Court to register under Section 5 of the Act, the petitioners will likewise be subject to the provisions of Section 26 (b) thereof: 243

> "(b) Every contract made in violation of any provision of this title or of any rule, regulation, or order thereunder, and every contract heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this title, or any

244 rule, regulation, or order thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, regulation, or order, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision,
245 rule, regulation, or order."

They will likewise be subjected to the following penalty provision of Section 29:

> "Any person who wilfully violates any provision of this title or any rule, regulation, or order thereunder (other than an order of the Commission under subsection (b), (d), (e), or (f) of section 11), * * * shall upon conviction be fined not more than $10,000 or imprisoned not more than two years, or both * * *
246 but no person shall be convicted under this section for the violation of any rule, regulation, or order if he proves that he had no knowledge of such rule, regulation or order."

VIII.

Each of the petitioners, *as itself a holding company in the holding-company systems of one or more of the defendants,* has a direct interest in the subject matter of this action, which interest will

be vitally affected by any decree entered by this 247
Court herein, in the following manner:

If the Court should order the defendant holding companies to register under Section 5 of the Act, all of the subsidiaries of the petitioners mentioned in paragraph IV hereof (all of which, by reason of the facts hereinabove alleged, are likewise subsidiary companies of one or more of the defendant holding companies within the meaning of "subsidiary companies" as defined in Section 2 (a) (8) of the Act) would be and become fully subject to the jurisdiction of the Securities and Exchange 248
Commission in the same manner as the petitioners themselves, as fully set forth in paragraph VII hereof. Such a decree by this Court herein would directly affect the value of petitioners' investments in the stock and other securities of their respective subsidiary companies.

Furthermore, if defendant holding companies be ordered by this Court to register under Section 5 of the Act, it would be and become the duty of the Securities and Exchange Commission by the terms of Section 11 of said Act as soon as practicable after January 1, 1938, to cause each of said defendants 249
and each of the petitioners, as a subsidiary company of one or more of the defendants, to take such action as the Commission might find necessary to limit the operations of the holding company system of which each of the defendants and each of the petitioners would be then a part, to a "single integrated public-utility system" (meaning thereby one whose utility assets are physically interconnected or capable of physical interconnections, Section 2 (a) (29)).

250 The respective holding company systems of some or all of the petitioners may constitute physically interconnected properties within the meaning of Section 11, but said Section 11 submits to the jurisdiction of the Commission the conclusive determination of the factual questions embodied in the definition of an "integrated public-utility system". Petitioners have no present means of knowing whether, and the extent to which, the Commission might find that the respective properties operated by them and their subsidiaries constitute integrated public-
251 utility systems. Should the Commission acquire jurisdiction over these petitioners by virtue of an order of this Court requiring the defendant holding companies to register, petitioners would be confronted with the possibility of the dismemberment, dissolution or reorganization of their own respective holding-company systems.

Section 11 of the Act further imposes upon the Commission the duty of requiring that each subsidiary company of each registered holding company shall take such steps as the Commission shall find necessary to insure that the corporate structure
252 or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders of such holding-company system. This provision would likewise be a threat to the business and organization of each of the petitioners should this Court order the defendant holding companies to register under Section 5 of said Act.

IX. 253

By reason of the facts hereinabove alleged the rights of the petitioners may be seriously jeopardized unless they are allowed to intervene herein.

WHEREFORE, the petitioners Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, Power Securities Corporation, Idaho Power Company, Utah Power & Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power 254
Company, Nebraska Power Company, Pacific Power & Light Company, The Washington Water Power Company, Lehigh Power Securities Corporation, Pennsylvania Power & Light Company and Easton Consolidated Electric Company, pray that an order may be made and entered in this proceeding granting leave to your petitioners to intervene herein as parties defendant and to file answers and cross bills to plaintiff's bill of complaint and for such other and further relief as to this Court may seem just and proper.

255

APPALACHIAN ELECTRIC POWER COMPANY

THE OHIO POWER COMPANY

THE SCRANTON ELECTRIC COMPANY

ATLANTIC CITY ELECTRIC COMPANY

256 POWER SECURITIES CORPORATION
IDAHO POWER COMPANY

UTAH POWER & LIGHT COMPANY
UNITED GAS PUBLIC SERVICE COMPANY

HOUSTON GULF GAS COMPANY

THE MONTANA POWER COMPANY

NEBRASKA POWER COMPANY

257 PACIFIC POWER & LIGHT COMPANY

THE WASHINGTON WATER POWER COMPANY

LEHIGH POWER SECURITIES CORPORATION

PENNSYLVANIA POWER & LIGHT COMPANY

258 EASTON CONSOLIDATED ELECTRIC COMPANY

By SIMPSON THACHER & BARTLETT,
THOMAS D. THACHER,
JOHN F. MacLANE,
Attorneys.

State of New York
County of New York ss. 259

JOHN F. MacLANE, being duly sworn deposes and says: That he is an attorney and counsellor-at-law and a member of the firm of Simpson Thacher & Bartlett, attorneys for the petitioners; that he has read the foregoing petition and knows the contents thereof and that the same is true to his knowledge except as to matters therein stated to be alleged on information and belief and as to those matters he believes it to be true and that the reason why this verification is not made by the petitioners is that the petitioners are all corporations foreign to the State of New York and not residents of the Southern District of New York. 260

JOHN F. MacLANE

Sworn to before me this
29th day of November, 1935.

Reeve Schley, Jr.,
Notary Public New York County,
Clerk's No. 866, Register's No. 6-S-1207, 261
Commission Expires March 30, 1936.
(SEAL)

Stipulation

262 (Title of Court and Cause)

It is hereby stipulated by and between the parties to the above entitled action by their respective attorneys as follows:

1. That the above suit in equity is pending, but not yet at issue in the District Court of the United States, Southern District of New York. That the Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, Power Securi-
263 ties Corporation, Idaho Power Company, Utah Power & Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company, Pacific Power & Light Company, The Washington Water Power Company, Lehigh Power Securities Corporation, Pennsylvania Power & Light Company, and Easton Consolidated Electric Company, all duly organized and existing corporations, have duly petitioned for leave to intervene.

2. It is further stipulated that such petitioners
264 have, and each one of them has, an interest in the subject-matter of this proceeding of such nature and extent that they are entitled to intervene herein as parties defendant.

3. That the plaintiff does not by this stipulation and shall not be deemed to have admitted any allegation of the petition except as stated herein.

Stipulation

4. It is stipulated that an order may be made and entered herein, without notice, granting leave to the petitioners, and to each of them, to intervene herein as parties defendant and to file answers and cross bills to plaintiff's bill of complaint and to take such other action from time to time as they might have taken had they been originally joined as defendants. 265

5. Consent to the form and entry of the attached order without further notice is hereby given.

Dec. 4, 1935. 266

Attorneys for the Plaintiff,
JOHN J. BURNS,
General Counsel, Securities and Exchange Commission.

ROBERT A. JACKSON,
Special Counsel.

Attorneys for the Defendants,
SIMPSON THACHER & BARTLETT. 267

Attorneys for Intervening Defendants,
SIMPSON, THACHER & BARTLETT.

Order Bringing in Appalachian Electric Power Co., et al.

268

(Title of Court and Cause)

Upon the annexed petition of Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, Power Securities Corporation, Idaho Power Company, Utah Power & Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company, Pacific Power & Light Company, The Washington Water Power
269 Company, Lehigh Power Securities Corporation, Pennsylvania Power & Light Company and Easton Consolidated Electric Company and upon the annexed consent, it is

ORDERED, ADJUDGED AND DECREED that Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, Power Securities Corporation, Idaho Power Company, Utah Power & Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The
270 Montana Power Company, Nebraska Power Company, Pacific Power & Light Company, The Washington Water Power Company, Lehigh Power Securities Corporation, Pennsylvania Power & Light Company and Easton Consolidated Electric Company be and they hereby are permitted to intervene herein as parties defendant and to file answers and cross-bills to the bill of complaint herein.

GODDARD,
United States District Judge.

Stipulation Extending Time to Answer

(Title of Court and Cause) 271

IT IS HEREBY STIPULATED AND AGREED by and between the solicitors for the respective parties hereto that the time of the defendants and the intervening defendants to answer the complaint herein or move with respect thereto be and the same hereby is extended to and including the 6th day of January, 1936.

Dated, December 13, 1935.

272

JOHN J. BURNS,
ROBERT H. JACKSON,
Solicitors for Plaintiff.

SIMPSON THACHER & BARTLETT,
Solicitors for Defendants
and Intervening Defendants.

Filed December 16, 1935.

273

Stipulation Extending Time to Answer

274 (Title of Court and Cause)

It is stipulated by and between the attorneys for the respective parties to the above entitled action that the defendants have twenty days additional time in which to answer the bill of complaint herein, and the date of issue shall remain the same as if this extension had not been granted.

January 7, 1936.

JOHN J. BURNS,
275 General Counsel, Securities and Exchange Commission.

ROBERT H. JACKSON,
Special Counsel,
Attorneys for the Plaintiff.

SIMPSON THACHER & BARTLETT,
Attorneys for Defendants and Intervening Defendants.

276

ANSWER OF DEFENDANTS AND INTERVENING DEFENDANTS TO THE AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT.

(Title of Court and Cause)

Defendants Electric Bond and Share Company (hereinafter called "Bond and Share"), American Gas and Electric Company (hereinafter called "American Gas"), American Power & Light Company, National Power & Light Company, Electric Power & Light Corporation and United Gas Corporation and intervening defendants Power Securities Corporation, Idaho Power Company, Utah Power & Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company, Pacific Power & Light Company, Lehigh Power Securities Corporation, Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, The Washington Water Power Company, Pennsylvania Power & Light Company and Easton Consolidated Electric Company for their joint and several answer to the Amended and Supplemental Bill of Complaint (hereinafter referred to as the "Bill") herein:

(Admissions, allegations or denials made without specification of a particular defendant or defendants are made by each defendant severally and by all defendants jointly. Allegations or denials referring to any particular defendant or defendants are made by the defendant or defendants

280

to whom the same refer and, on information and belief, are adopted by the other defendants. The intervening defendants are included within the terms "defendant" or "defendants" as used herein.)

FOR A FIRST DEFENSE

1. For the purposes of this suit, and not otherwise, and reserving all objections or exceptions which might be raised as matter of law to the Bill by motion to dismiss, motion to strike, or otherwise, in this suit, and further reserving the right to deny, qualify or explain in any future suit or proceeding between the parties hereto, or other parties, any admission hereby made, admit all the allegations (or representations) of the Bill, except as hereinafter specifically denied, subject to explanations or qualifications hereinafter made.

281

2. In admitting any of the allegations of the Bill, particularly but not limited to those in paragraphs III, IV, V, VII, XXIII, XXIV and XXV, which refer to or are based upon the Public Utility Act of 1935, generally referred to as the "Act", defendants allege that said Act is unconstitutional and void, and confers no rights upon plaintiff, and imposes no duties upon defendants, or any of them, for the reasons fully set forth in defendants' separate Defense, Counterclaim and Cross-Bill (hereinafter referred to as the "separate defense") filed herewith, and hereby made a part of this Answer. The requirement of registration in-

282

283

voked by plaintiff herein is not separable from the other requirements and provisions of said Act, but is an integral part thereof subjecting defendants and each of them to prohibitions, disabilities, liabilities and penalties, to which said defendants may not lawfully or constitutionally be subjected.

In the following paragraphs of this Answer references are to the paragraph and page of the Bill which are denied, explained, or otherwise referred to in the text immediately following.

284

3. *Par. VI, pp. 4-6*—Deny that defendant Bond and Share is a top holding company in a "holding company system" except in the limited and arbitrary sense in which the term "holding company sustem" is defined in the Act, and allege that, as set forth in the separate defense and the exhibits thereto, the defendants and their respective subsidiary companies are separate corporate entities and are separately managed and directed, and deny that defendant Bond an Share "controls" defendants American Gas, American Power & Light Company, Electric Power & Light Corporation or National Power & Light Company, or any thereof, except to the extent hereinafter alleged. Deny that said defendant Bond and Share owns or controls any electric or gas public utility company, but admits that said defendant exercises such degree of influence or control over the other defendants above mentioned, and through them of their electric and gas public utility subsidiary com-

285

286 panies, as is inherent in defendant Bond and Share's stock ownership in such other defendants, which is set forth in paragraph VIII of the Bill. Such influence and control is exercised by voting the stock owned by defendant Bond and Share, and not by common officers, directors, or employees, or direct participation in the management, of such other defendants or their subsidiary companies.

287 With reference to the allegations of paragraph VI of the Bill as to the operating revenues of the so-called "Electric Bond and Share system", defendants allege that the revenues of the operating public utility subsidiary companies within such so-called system are derived principally from the sale of gas and electric energy, and that some part of such revenues is reflected in interest and dividend payments to the holding company defendants, and allege that defendant Bond and Share receives substantial revenues from sources other than sales of either gas or electric energy within the United States.

288 Deny that the electric properties in such so-called system constitute interstate groups, except in so far as transmission lines extend across state boundaries interconnecting electric generating stations and transmission and distribution systems in different states. Allege that the electric public utility companies within the seven groups, referred to in the Bill, are predominantly intrastate companies engaged primarily in generation, distribution and sale of electric power and energy

289

within the states in which they respectively operate, subject to the jurisdiction and control of such states and the regulatory authorities thereof, and that the transmission of electric energy across state boundaries is generally accomplished by the generating company for subsequent sale by it (or in some instances by associate companies) at retail within the state to which such energy is transmitted. Admit, however, that, in certain cases specifically referred to in the separate defense, and the exhibits thereto, some of the subsidiary 290
electric utility companies of the holding companies described in the Bill do sell electric energy moving across state boundaries, to the extent and in the approximate amounts set forth in such separate defense and the exhibits thereto. Such electric utility companies are not common carrier and their interstate business, if any, is severable and distinct from their intrastate business.

Deny that the gas properties in such so-called system form interconnected interstate systems for the production and transmission of manufactured and natural gas. Allege that some of said gas 291
properties are entirely intrastate, both as to production, transmission and sale, and that others of said gas properties engage primarily in intrastate production, distribution and sale of natural or manufactured gas, having as a minor and distinct portion of their business the transmission of gas produced or purchased by them in one state across a state boundary to another state, where it is distributed and sold at reduced pressure and

292 at retail, subject to the jurisdiction and control of said state and the regulatory authorities thereof. Allege that others of said gas properties do have extensive pipe line facilities crossing state boundaries by which large amounts of gas are transmitted from one state to another, for retail sale at reduced pressure in the state to which transmitted by the same company (or in some instances by associate companies), subject to the jurisdiction and control of such state and its regulatory authorities. Admit, however, that in cer-
293 tain cases specifically referred to in the separate defense and the exhibits thereto, certain of such gas utility companies sell natural or manufactured gas moving across state boundaries, to the extent and in the approximate amounts set forth in such separate defense and the exhibits thereto. Such gas utility companies are not common carriers and their interstate business, if any, is severable and distinct from their intrastate business.

4. *Par. VII, subpar. 1, p. 6*—Deny that since
294 December 1, 1935, or prior thereto, defendants Bond and Share, American Gas, American Power & Light Company, National Power & Light Company, Electric Power & Light Corporation; United Gas Corporation, Power Securities Corporation, Lehigh Power Securities Corporation or Easton Consolidated Electric Company, or any of them, have engaged or will engage in selling transporting, transmitting or distributing either natural or manufactured gas or electric energy. Deny that

since December 1, 1935 or prior thereto, any of the defendants have owned or operated or will own or operate utility assets for the transportation, transmission or distribution of natural or manufactured gas or electric energy in interstate commerce or across state boundaries, except that: defendants Idaho Power Company, Utah Power & Light Company, The Montana Power Company, Nebraska Power Company, Pacific Power & Light Company, Appalachian Electric Power Company, The Ohio Power Company and The Washington Water Power Company in some instances transmit, and in other instances sell, electric energy across state boundaries, and defendant United Gas Public Service Company transmits, and in some cases sells, gas across state boundaries. Certain subsidiaries of certain of the defendants, in some cases transmit, and in some cases sell, electric energy or gas across state boundaries. The extent which these defendants, and the subsidiary companies of any of the defendants, transmit or sell electric energy or gas across state boundaries is stated in the separate defense and the exhibits thereto.

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Par. VII, subpar. 2, p. 6—Deny that defendant Bond and Share is engaged or will engage in taking steps in the performance of service, sales or construction contracts, or the performance of similar contracts, but admit that Ebasco Services Incorporated, a wholly owned subsidiary company of defendant Bond and Share, is engaged and will

298 take steps in the performance of service contracts, and that Phœnix Engineering Corporation, a wholly owned subsidiary of said Ebasco Services Incorporated, will take steps in the performance of service and construction contracts.

Deny that defendant American Gas has entered into service, sales or construction contracts, but admit that it has made arrangements whereby it has made available and rendered and will continue to make available and render to its subsidiary
299 operating public utility companies services of the nature described in paragraph XXII of the Bill.

Deny that either defendant Bond and Share or defendant American Gas or Ebasco Services Incorporated, or Phœnix Engineering Corporation, has made or will make or perform any sales contracts with public utility companies or holding companies, or is engaged in selling or will sell goods to public utility companies or holding companies.

Par. VII, subpar. 3, p. 7—Defendants are with-
300 out knowledge whether they will in the future distribute or make public offerings for sale or exchange of their own securities or the securities of their subsidiary companies or affiliates, or any thereof.

Par. VII, subpar. 4, p. 7—Defendants are without knowledge whether they will in the future acquire or negotiate for the acquisition of securities of their subsidiary companies or affiliates or of public utility or holding companies.

Answer of Defendants and Intervening Defendants to the Amended and Supplemental Bill of Complaint

301

Par VII, subpar. 5, p. 7—Deny that either defendant Bond and Share or defendant American Gas have engaged since December 1, 1935, or will engage in business in interstate commerce.

Deny that any of the defendants have engaged or will engage in interstate commerce, except to the extent that any of the acts specified in the separate defense and the exhibits thereto, may be held to constitute interstate commerce.

Par. VII, subpar. 6, pp. 7-8—Deny that defend- 302
ant Bond and Share owns, controls or holds voting securities of any electric or gas public utility company, but admit that it owns voting securities of defendant holding companies as alleged in Paragraph VIII of the Bill, which defendants in turn own voting securities of electric and gas utility subsidiary companies. The extent to which subsidiary companies of the defendants, or any thereof, sell, transport, transmit or distribute natural or manufactured gas or electric energy, or own or operate utility assets therefor, across state boundaries, is set forth in the separate defense and 303
the exhibits thereto, and except to the extent that transactions therein set forth may be held to constitute interstate commerce, defendants deny that subsidiary companies of said defendants are engaged in interstate commerce or in the ownership of utility assets therefor.

Par. VII, subpar. 7, p. 8—Deny that any subsidiary company of defendant Bond and Share is

304

engaged in the performance of sales contracts or in selling goods to public utility companies or holding companies.

5. *Pars. IX, X, XI, XII and XIII, pp. 9-13*—Deny the allegations of these paragraphs that defendants respestively own "substantially all" of the voting securities of the subsidiary companies so specified in said paragraphs, except to the extent stated in the separate defense, where the percentages of said securities owned by defendants
305 are accurately set forth. in this connection defendants do not deny that the ownerships so specified are in each case sufficient to constitute voting control for the purpose of election of directors and other matters requiring stock vote.

Par. XII, subpar. 1, p. 11—Deny that United Production Corporation, Southern Gas & Fuel Company and Compania Mexicana de Gas, S. A. are public utility companies.

306 *Par. XIII, subpar. 1, p. 12*—Deny that Susquehanna Gas Company is a public utility company. Deny that defendant Pennsylvania Power & Light Company owns any of the voting securities of The Carlisle Gas and Water Company, Columbia Gas Company, Pine Grove Electric, Light Heat & Power Company, or Shenandoah Light, Heat and Power Company, and allege that pursuant to the provisions of an order of the Public Service Commission of the Commonwealth of Pennsylvania dated

307

November 25, 1935, such companies and the properties and business thereof were merged into or consolidated with those of defendant Pennsylvania Power & Light Company, and further allege that said defendant Pennsylvania Power & Light Company, in addition to owning all or substantially all of the voting securities of Lehighton Electric Light and Power Company, as alleged in the Bill, also owns or controls 50% of the voting securities of Stanton Operating Company and approximately 27% of the voting securities of Conestoga 308
Transmission Company, which are electric utility companies.

6. *Par. XIV, p. 13*—Allege that the exemption of the companies named in said paragraph from the provisions of the Holding Company Act under the terms of the rule set forth in Exhibit A attached to the Bill is a temporary exemption existing in the sole discretion of the plaintiff and that such companies have no means of knowing whether said exemption will continue after February 2, 1936; that such companies are subsidiary companies of 309
the defendant Bond and Share and of their respective holding companies, within the meaning of Section 2(a)(8) of the Act, and are not entitled to exemption or to claim exemption as subsidiary companies under said Act, and that exemption of said companies as holding companies will be without substantial value to them if defendant Bond and Share or their respective holding companies shall be required to register under the

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Act, as such companies would remain subsidiary companies subject to all or practically all the provisions of said Act.

7. *Par. XV, subpar. 1, pp. 14-16*—Deny that electric energy is transmitted in interstate commerce, or that lines, assets or facilties therefor are owned, leased or operated, by the defendants or any of them or by any of their subsidiary companies except in the manner and to the extent alleged in the separate defense and the exhibits
311 thereto and except in so far as the transactions therein described may be held to constitute interstate commerce. Defendants admit that the figures stated in the tables set forth on pages 15 and 16 of the Bill are substantially correct on the premises stated and defined on said page 15, but deny that the electric energy transmitted across state boundaries is transmitted in interstate commerce or is "interstate electric energy" except in so far as sales of such electric energy in the manner and amounts set forth in the separate defense and
312 the exhibits thereto may be held to constitute interstate commerce, and defendants refer thereto for a statement of the facts. Defendants deny that the act of selling electric energy across state boundaries in itself constitutes interstate commerce subject to Federal regulation or control.

In admitting the figures stated in the table set forth on said pages 15 and 16, defendants further allege that while the figures are approximately accurate on the basis of information available,

313

it is impossible to state such figures with complete accuracy because of mechanical difficulties of measurement, including the absence of state line meters, the records in certain cases having been kept only for the purpose of showing net deliveries or transfers. Furthermore, the figures stated include duplications of more than 1,184,000,000 kilowatt hours, substantially as follows:

American Gas and Electric System: In 1933 The Ohio Power Company delivered at or near the Ohio-Indiana boundary approximately 300,000,000 314
kilowatt hours to Indiana & Michigan Electric Company, which figure is included in the total quantities of electric energy and so-called interstate electric energy handled by said Indiana & Michigan Electric Company and The Ohio Power Company.

In 1933 The Ohio Power Company delivered at or near the Ohio-West Virginia boundary approximately 100,000,000 kilowatt hours to Appalachian Electric Power Company and this transaction is included in the total quantities of electric energy and so-called interstate electric energy
handled by each of said companies. In the same 315
year, Appalachian Electric Power Company delivered at or near said Ohio-West Virginia boundary approximately 100,000,000 kilowatt hours to The Ohio Power Company and this transaction is also included in the total quantities of electric energy and so-called interstate electric energy handled by each of said companies.

American Power & Light System: Minnesota

316

Power & Light Company in 1933 delivered at or near the Minnesota-Wisconsin boundary approximately 18,396,000 kilowatt hours to Northern Power Company and this figure is included in the total quantities of electric energy and so-called interstate electric energy handled by both Minnesota Power & Light Company and Northern Power Company.

Minnesota Power & Light Company in 1933 delivered at or near the Minnesota-Wisconsin boundary approximately 12,351,000 kilowatt hours to Superior Water, Light and Power Company and this figure is included in the total quantities of electric energy and so-called interstate electric energy handled by both Minnesota Power & Light Company and Superior Water, Light and Power Company.

317

Electric Power & Light System: Louisiana Power & Light Company in 1933 delivered at or near the Louisiana-Arkansas boundary approximately 164,973,000 kilowatt hours to Arkansas Power & Light Company and this figure is included in the total quantities of electric energy and so-called interstate electric energy handled by both Louisiana Power & Light Company and Arkansas Power & Light Company.

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Louisiana Power & Light Company in 1933 delivered at or near the Louisiana-Mississippi boundary approximately 126,559,000 kilowatt hours to Mississippi Power & Light Company and this figure is included in the total quantities of electric energy and so-called interstate electric energy handled by

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both Louisiana Power & Light Company and Mississippi Power & Light Company.

National Power & Light System: In 1933 Carolina Power & Light Company delivered to Tennessee Public Service Company at or near the Tennessee-North Carolina boundary approximately 89,821,000 kilowatt hours, which figure is included in the total quantities of electric energy handled, and as representing the so-called interstate electric energy handled, by said Tennessee Public Service 320
Company and is also included in the total quantities of electric energy and the so-called interstate energy handled by said Carolina Power & Light Company.

In addition, in 1933 Carolina Power & Light Company itself delivered at a point at the North Carolina-Virginia boundary and arranged for Tennessee Public Service Company, an associate company, to deliver at Kingsport, Tennessee, approximately 260,000,000 kilowatt hours of electric energy to Appalachian Electric Power Company, and this transaction is included in the total quantities of 321
electric energy and so-called interstate electric energy handled by both Carolina Power & Light Company and Appalachian Electric Power Company. In the same year Appalachian Electric Power Company delivered to Carolina Power & Light Company itself, or to Tennessee Public Service Company for the account of said Carolina Power & Light Company at the same points of delivery, approximately 12,500,000 kilowatt hours and this transaction is included in the total quan-

322 tities of electric energy and the so-called interstate electric energy handled by both Appalachian Electric Power Company and Carolina Power & Light Company.

8. *Par. XV, subpar. 2, pp. 16-17*—Deny that natural or manufactured gas is transmitted in interstate commerce by the gas utility companies which are subsidiary companies of defendants United Gas Corporation or American Power & Light Company or that said gas utility companies
323 own, lease or operate utility assets for such transmission or take part in such transmission except in the manner and to the extent that the acts set forth in the separate defense and the exhibits thereto may be held to constitute interstate commerce. Deny that subsidiary companies of defendant United Gas Corporation own or operate utility assets for the transmission of or transmit or take part in the transmission of natural or manufactured gas in interstate commerce except to the extent that the acts set forth in the separate defense and
324 the exhibits thereto may be held to constitute interstate commerce. Deny that Consolidated Gas Utilities Company is a subsidiary company of United Gas Corporation. Deny that subsidiary gas public utility companies of defendant American Power & Light Company own or operate utility assets for the transmission of or transmit or take part in the transmission of either natural or manufactured gas in interstate commerce except to the extent that the acts set forth in the separate defense and the exhibits thereto may be held to constitute inter-

325

state commerce. Defendants deny that the act of selling gas across state boundaries itself constitutes interstate commerce subject to Federal regulation or control.

9. *Par. XVI, subpar. 1, p. 18*—Deny that, except as hereinafter alleged, defendant Bond and Share organized defendants American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company or American Gas; deny that defendant Bond and Share 326
had the purpose or intention of employing said companies as its corporate instrumentalities for the acquisition, financing or control of operating public utility companies; deny that at the time of the organization of the said companies defendant Bond and Share acquired by subscription or purchase, or in exchange for property, voting securities of said companies in an amount sufficient to enable it to dominate or control the affairs of said companies; deny that it retained voting securities in amounts sufficient to insure such domination and control. 327

Allege that defendant Bond and Share took a leading part, and a substantial financial interest, in organizing or creating such financial or underwriting syndicates as were required or used in the organization of said defendant holding companies. In some cases defendant Bond and Share turned over to the newly organized holding companies the stock of operating public utility companies owned by it; in others, the holding companies acquired directly from former owners, other than

328

defendant Bond and Share, the stocks of such operating public utility companies. In other cases the holding companies acquired from former owners, other than defendant Bond and Share, some stocks of operating public utility companies, and in addition thereto defendant Bond and Share turned over to such holding companies some stocks of operating public utility companies owned by it. Upon the completion of the prerequisite financial arrangements, defendant Bond and Share be-
329 came, in effect, managing agent for the said syndicates in accomplishing the organization of said holding companies. The administrative, supervisory, investigating and clerical work was done by or under the direction of defendant Bond and Share. Defendant Bond and Share employed for the account of said syndicates, or the newly organized holding companies, attorneys, auditors, engineers and such other professional or expert services as so required. Said work was done for the account of each of such newly organized holding companies, and was paid for by them in such
330 manner as may have been agreed upon in each particular case. The initial financial interest taken by defendant Bond and Share in each of said holding companies and the proportion of voting stock initially received by it or issued upon its order varied in different cases. The remainder of the original issue of securities was distributed through syndicate participations or general or limited public subscriptions under the supervision of defendant Bond and Share. The defendant Bond and Share retained the voting securities originally ac-

quired by it, and has subsequently purchased and acquired additional voting stock of said holding companies until it now has the amounts of such stock as alleged in paragraph VIII of the Bill. 331

Deny that defendant Bond and Share has at any time completely dominated or controlled the corporate activities of said defendant holding companies, but admit that defendant Bond and Share has exercised and now exercises such degree of influence and control over said companies as is inherent in its ownership of the voting securities of said companies, as alleged in paragraph VIII of the Bill, such influence and control being now exercised in the manner alleged in paragraph 3 hereof. 332

Deny that defendant Bond and Share caused its own officers to be elected directors and officers of any of the said defendant holding companies at the time of the organization thereof, but admit that certain of its directors and executive officers were elected and remained directors and officers of each said defendant holding companies until after the passage of the Act. 333

Deny that since the passage of the Act defendant Bond and Share caused the resignations of officers and directors of said holding companies or the election of certain of its executive officers as officers and directors of said defendant holding companies, either to create a management subject to the domination or control of defendant Bond and Share, or otherwise, but admit that such officers and directors resigned.

334 Deny that the officers and directors of said defendant holding companies are persons designated by defendant Bond and Share, or are persons subject to the direction or control of defendant Bond and Share.

10. *Par. XVI, subpar. 2, p. 19*—Deny that defendant Bond and Share caused defendants American Power & Light Company, Electric Power & Light Corporation and National Power & Light Company to enter into service contracts or that
335 pursuant thereto defendant Bond and Share performed substantially all of the activities necessary to the conduct of such companies' corporate business and functions, but admit that up to a short time prior to the filing of the original Bill of Complaint herein, such service contracts existed, and officers and empoyees of defendant Bond and Share acted as the officers of said defendants, and administered their corporate activities, subject to the direction and control of the directors thereof.

Deny that defendant Bond and Share assigned
336 such service contracts with such holding companies to Ebasco Services Incorporated or that defendant Bond and Share itself or through Ebasco Services Incorporated or otherwise, does now or will continue to perform the services provided for by said contracts, and allege that such contracts were cancelled subsequent to the passage of the Act and prior to the filing of the original Bill of Complaint herein.

Answer of Defendants and Intervening Defendants to the Amended and Supplemental Bill of Complaint

337

11. *Par. XVI, subpar. 3, p. 19*—Deny that the securities of the public utility companies owned by defendants American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company and American Gas were either transferred to them by defendant Bond and Share or purchased by them at the instance of said defendant, except to the extent hereinbefore set forth in paragraph 9 of this Answer.

Deny that said defendant holding companies last above named perform no other function with reference to companies the stock of which is owned by them, except to serve as, or that they do serve as, a medium through which defendant Bond and Share may publicly finance the operations of operating public utility companies or through which defendant Bond and Share, either with a comparatively small investment, or otherwise, may or does dominate or control the operations of operating public utility companies, and allege that each of said defendant holding companies is separately officered, staffed, directed and financed (except that two officers and directors of defendant Bond and Share are also directors of defendant American Gas) and functions as a corporate entity separate and distinct from that of defendant Bond and Share.

338

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Deny that defendant Bond and Share has used said defendant holding companies as instrumentalities for dominating or controlling the operations of operating public utility companies.

Deny that all important questions of business policy and personnel arising in the operations of

340 the subsidiary public utility companies of said defendant holding companies are determined by defendant Bond and Share. Deny that said public utility companies are controlled or operated as component members of a single system. The method of operation of said companies is hereinafter alleged in the separate defense and the exhibits thereto.

12. *Par XVI, subpar. 4, p. 20*—Deny that defendant Bond and Share has controlled or directed or now controls or directs the operations of any
341 operating public utility companies by means of supervisory services rendered to such companies, or otherwise, or that it caused any operating public utility companies to negotiate or enter into service contracts for the performance of services substantially the same as those referred to in paragraph XVIII of the Bill, but admit that it entered into such contracts with many of such companies.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services Incorporated, but admit that Ebasco Services Incorpora-
342 ted, renders services to operating public utility subsidiary companies of the defendant holding companies.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services Incorporated, supervises, directs or controls in any way the operations of its subsidiary operating public utility companies but admit such supervision by Ebasco Services Incorporated as is provided for in such service contracts.

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13. *Par. XVI, subpar. 5, p. 21*—Deny that defendant Bond and Share has controlled or directed by any means or instrumentality the business and affairs of any public utility companies; that it has caused holding companies to purchase controlling interests in public utility companies; that it has constructed or caused operating public utility companies to construct utility properties; that it has caused the purchase and construction of utility properties or that it has caused the development of interconnections between properties of public utility subsidiary companies of the defendant holding companies, but admit that there has been a development of such interconnections between such public utility properties, and that defendant Bond and Share has assisted in and exerted a substantial influence in the development of the public utility properties of subsidiary companies of the other defendant holding companies.

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Deny that defendant Bond and Share, either in its own capacity or through the corporate organizations of the other defendants herein, or otherwise, is engaged or will engage in the transmission in interstate commerce of electric energy or manufactured or natural gas.

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14. *Par. XVI, subpar. 6, p. 21*—Deny that defendant American Gas by virtue of the rendition of supervisory services or otherwise is itself engaged in the interstate transmission of electric energy.

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15. *Par. XVI, subpar. 7, p. 22*—Deny that defendants Power Securities Corporation, Lehigh Power Securities Corporation or Houston Gulf Gas Company are either themselves, or through the instrumentality of their subsidiary public utility companies, engaged in the interstate transmission of electric energy or natural or manufactured gas.

16. *Par. XVII, p. 22*—Deny each and every allegation contained in paragraph XVII of the Bill. Allege that such services have been rendered in
347 the past, but that the contracts therefor have been cancelled as alleged in paragraph 10 hereof and that such services are no longer rendered.

17. *Par. XVIII, pp. 24-29*—Deny that defendant Bond and Share, in its own name or through Ebasco Services Incorporated, or otherwise, but admit that Ebasco Services Incorporated, by the use of the mails or means or instrumentalities of interstate commerce, is and will be engaged in taking steps in the performance of its existing
348 service contracts with operating public utility companies.

Deny that under such contracts defendant Bond and Share, in its own name or through Ebasco Services Incorporated, or otherwise, undertakes to render, but admit that Ebasco Services Incorporated for an agreed rate of compensation based upon total monthly operating revenues undertakes to render, and does render, extensive services, and that its client operating public utility companies

349

agree to accept such services and to pay for the same.

Admit that the service contracts now being performed by Ebasco Services Incorporated provide for rendering services substantially the same as those referred to in paragraph XVIII of the Bill, but allege that no executives or other members of the organizations of defendant Bond and Share or of Ebasco Services Incorporated are serving as officers or directors of said client operating companies doing business in the United States.

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18. *Par. XIX, p. 29*—Deny that defendant Bond and Share itself or through the instrumentality of Ebasco Services Incorporated, or otherwise, controls or directs the purchasing of or purchases the materials, supplies or equipment required by operating public utility companies, but admit that Ebasco Services Incorporated, as part of the general services rendered to its client operating public utility companies, renders certain advisory and other services in connection with the purchasing of some, but not all, of the materials, supplies and equipment required by said operating public utility companies.

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Deny that defendant Bond and Share is now a party to any contracts, agreements or understandings under which materials, supplies or equipment are purchased by or for the account of public utility operating companies, and deny that Ebasco Services Incorporated is a party to any contracts, agreements or understandings with any manufac-

352 turing company under which it undertakes to place orders with any such company for all or any material part of the materials, supplies and equipment required by its client public utility operating companies, but admit that Ebasco Services Incorporated has arranged for certain contracts with one or more independent manufacturing companies under which said Ebasco Services Incorporated enables its client operating public utility companies, if they so elect, to place with such manufacturing com-
353 panies orders for certain but not all of the materials, supplies and equipment which may be required by such client operating public utility companies, all as more fully set forth in paragraph 38 of the separate defense.

Deny that defendant Bond and Share, either in its own name or through the instrumentality of Ebasco Services Incorporated, or otherwise, or that said Ebasco Services Incorporated, purchases any materials, supplies or equipment for the account of public utility operating companies, but admit that Ebasco Services Incorporated makes purchases
354 as agent for its client companies, and, by volume contracts negotiated with manufacturing and supply companies, enables its client operating public utility companies to purchase annually materials, supplies and equipment valued at several millions of dollars.

Deny that defendant Bond and Share or said Ebasco Services Incorporated either causes or will cause any of such materials, supplies and equipment to be shipped in interstate commerce except as

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to Ebasco Services Incorporated, to the extent alleged in said paragraph 38 of the separate defense.

19. *Par. XX, p. 30*—Deny that defendant Bond and Share, through Phœnix Engineering Corporation or otherwise, but admit that Phœnix Engineering Corporation, in accordance with the terms of the service contracts now in effect between Ebasco Services Incorporated and the operating public utility companies as hereinabove set forth, in the ordinary course of its business by the use of the mails or means or instrumentalities of interstate commerce, negotiates and enters into construction contracts with operating public utility companies.

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Deny that defendant Bond and Share, through Phœnix Engineering Corporation or otherwise, but admit that Phœnix Engineering Corporation, in the ordinary course of its business, by use of the mails or means or instrumentalities of interstate commerce is engaged in taking steps in connection with the performance of such construction contracts.

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20. *Par. XXI, p. 31*—Deny that defendant Bond and Share and Ebasco Services Incorporated, or either of them, have caused the securities of defendant American Gas or of its subsidiaries to be offered for sale or distributed or sold in interstate commerce, and allege that they are without knowledge whether they will take any steps in the performance of financial services for defendant American Gas or its public utility subsidiary companies.

358

21. *Par. XXII, pp. 31-32*—Deny that services rendered by defendant American Gas are performed in consideration of an agreed rate of compensation paid to defendant American Gas, and allege that such services are rendered to the operating public utility companies at the cost thereof to defendant American Gas, which cost is apportioned between said companies and includes no profit or fee payable to defendant American Gas in excess of such cost.

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22. *Par. XXIII, pp. 33-35*—Deny that defendant Bond and Share, either in its own name or through its subsidiary Ebasco Services Incorporated, or through said Phœnix Engineering Corporation, or otherwise, since December 1, 1935 has engaged in a business in interstate commerce.

Deny that the performance of service or construction contracts by Ebasco Services Incorporated or Phœnix Engineering Corporation contemplates or requires a continuous or regular intercourse in interstate commerce, but admit that such contracts

360 require the transportation across state boundaries of papers, reports and forms between the office of Ebasco Services Incorporated and its client operating companies, and admit that the information furnished by Ebasco Services Incorporated in connection with the exchange of apparatus results in the transportation of certain apparatus across state boundaries between the place of business of the company selling such apparatus and the

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place of business of the company purchasing such apparatus.

Deny that defendant Bond and Share, pursuant to these service contracts, or otherwise, sends persons from its offices in New York to operating public utility companies, but admit that Ebasco Services Incorporated and Phœnix Engineering Corporation are required to send, and do send, sponsors, operating specialists, engineers and other employees from their offices in New York to the states in which such public utility companies served by them operate.

362

Deny that defendant Bond and Share, through its officers or employees or otherwise, performs any services pursuant to such service contracts by any means or instrumentality whatsoever, but admit that the accounting, financial and other services performed pursuant to said contracts by the officers and employees of Ebasco Services Incorporated and Phœnix Engineering Corporation from the offices of said companies in New York City, for public utility operating companies in other states, are performed in part by means of interstate communication and instrumentalities of interstate commerce.

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Deny that either defendant Bond and Share or said Ebasco Services Incorporated enters into contracts for the sale of equipment or supplies to said client operating companies.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services Incor-

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porated, or otherwise, but admit that Ebasco Services Incorporated, in accordance with the provisions of the contracts with its client operating companies, arranges for the making of contracts under which manufacturing or other companies sell equipment and supplies to said client companies, which contracts are performed in part by means or instrumentalities of interstate commerce.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services Incorporated, but admit that said Ebasco Services In-
365 corporated, in accordance with the provisions of its contracts with client operating companies, arranges for the transportation by means or instrumentalities of interstate commerce of equipment and supplies to client companies.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services Incorporated, but admit that Ebasco Services Incorporated, in accordance with the terms of contracts with its client operating companies, furnishes information and services in connection with the ex-
366 change of apparatus by means of which purchases, sales and exchanges of second hand apparatus and materials are made between and among client companies, and between client companies and other companies, and that the conduct of such apparatus exchange contemplates and requires shipments of apparatus and materials by means or instrumentalities of interstate commerce.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services Incorporated, or that Ebasco Services Incorporated,

367

negotiates or takes charge of the sale or distribution in interstate commerce of securities of client operating companies, and deny that at this time either of said companies directs the sale of securities of client companies to persons in the territories which they serve.

Deny that defendant Bond and Share, either in its own name, or through Ebasco Services Incorporated, or through Phoenix Engineering Corporation, or that Ebasco Services Incorporated itself, but admit that Phoenix Engineering Corporation, purchases and arranges for the shipment of materials, supplies and equipment, by means or instrumentalities of interstate commerce as contemplated in and required by the construction contracts negotiated and entered into as hereinabove set forth.

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Deny that defendant Bond and Share receives, either in its own name, or through Ebasco Services Incorporated, or through Phoenix Engineering Corporation, but admit that Ebasco Services Incorporated and Phoenix Engineering Corporation receive, compensation from their client companies for the performance of the services referred to in paragraph XXIII of the Bill.

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Deny that the performance for compensation of services by Ebasco Services Incorporated or by Phoenix Engineering Corporation, referred to in paragraph XXIII of the Bill constitutes a business in interstate commerce.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services Incorporated, or through Phoenix Engineering Corporation, is engaged in interstate commerce.

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23. *Par. XXIV, p. 35*—Deny that defendant American Gas is engaged in rendering construction services for its subsidiary operating public utility companies, or that the performance of any services rendered by it to such companies requires any intercourse or transportation in interstate commerce except of reports, stationery, forms and clerical material, the use of facilities of interstate commerce in the transportation of officers and employees, and interstate communication by use of the mails, telephone and telegraph.

371 Deny that the performance of any services, as hereinbefore admitted, by defendant American Gas constitutes engaging in business in interstate commerce, or that said defendant is engaged in any business in interstate commerce.

AS A SEPARATE AND DISTINCT DEFENSE AND BY WAY OF COUNTERCLAIM AND CROSS-BILL

Defendants jointly and severally allege:

372 24. Defendant Bond and Share and defendants American Gas, American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company, United Gas Corporation, Power Securities Corporation, Lehigh Power Securities Corporation and Easton Consolidated Electric Company, which defendants other than Bond and Share are hereinafter sometimes referred to collectively as "**holding company defendants**", are duly organized and existing corporations, the

373

states in which they are incorporated and of which they are citizens and residents and the locations of offices respectively maintained by them for the transaction of business being:

Defendant	*Incorporation State of*	*Location of Office*
lectric Bond and Share Company	New York	New York, N. Y.
merican Gas and Electric Company	New York	New York, N. Y.
merican Power & Light Company	Maine	New York, N. Y.
lectric Power & Light Corporation	Maine	New York, N. Y.
ational Power & Light Company	New Jersey	New York, N. Y.
nited Gas Corporation	Delaware	New York, N. Y.
ower Securities Corporation	New Hampshire	New York, N. Y.
ehigh Power Securities Corporation	Delaware	New York, N. Y.
aston Consolidated Electric Company	New Jersey	Allentown, Pa.

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Defendants Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, Idaho Power Company, Utah Power & Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company, Pacific Power & Light Company, The Washington Water Power Company and Pennsylvania Power & Light Com-

Page Tightly Bound

376

pany, which defendants are hereinafter sometimes referred to collectively as "**operating company defendants**" but which are also holding companies as hereinafter set forth, are duly organized and existing corporations, the states in which they are incorporated and of which they are citizens and residents and the locations of their respective principal offices for the transaction of business being:

Defendant	*Incorporation State of*	*Principal Office*
377 Appalachian Electric Power Company	Virginia	Roanoke, Va.
The Ohio Power Company	Ohio	Canton, Ohio
The Scranton Electric Company	Pennsylvania	Scranton, Pa.
Atlantic City Electric Company	New Jersey	Atlantic City, N. J.
Idaho Power Company	Maine	Boise, Idaho
Utah Power & Light Company	Maine	Salt Lake City, Utah
United Gas Public 378 Service Company	Delaware	Houston, Texas
Houston Gulf Gas Company	Delaware	Houston, Texas
The Montana Power Company	New Jersey	Butte, Mont.
Nebraska Power Company	Maine	Omaha, Neb.
Pacific Power & Light Company	Maine	Portland, Ore.
The Washington Water Power Company	Washington	Spokane, Wash.
Pennsylvania Power & Light Company	Pennsylvania	Allentown, Pa.

Answer of Defendants and Intervening Defendants to the Amended and Supplemental Bill of Complaint

379

25. The plaintiff Securities and Exchange Commission is an independent agency in the executive branch of the Government of the United States with its principal office and domicile in the District of Columbia. The cross-defendants (made parties hereto by order of this Court) are administrative officers of the United States and are inhabitants of the District of Columbia. They are more particularly identified as follows: Homer S. Cummings (hereinafter referred to as the "Attorney General") is Attorney General of the United States; James 380
A. Farley (hereinafter referred to as the "Postmaster General") is the Postmaster General of the United States: James M. Landis, Robert E. Healy, George C. Mathews and James D. Ross (hereinafter referred to collectively as the "Commissioners") are members of and constitute the Securities and Exchange Commission.

The plaintiff and the cross-defendants threaten to perform certain acts, and to subject defendants to certain prohibitions, liabilities, and penalties, under the pretended authority of Title I of that certain Act of Congress (Public No. 333—74th 381
Congress—S. 2796; Title 15, Sections 79 to 79z-6, both inclusive, U. S. C. A.), entitled "An Act to provide for control and regulation of public-utility holding companies, and for other purposes", approved August 26, 1935, which Title I in Section 33 thereof is designated "Public Utility Holding Company Act of 1935" and for brevity may be sometimes hereinafter referred to as the "Holding Company Act", or simply as the "Act". For reasons

382

hereinafter set forth, the threatened acts of the plaintiff and the cross-defendants are not authorized, and said Act is unconstitutional and void. The plaintiff and the cross-defendants are, therefore, wholly without authority to do those things with which they are charged herein. There has thus arisen between the plaintiff and the defendants and between the defendants and the cross-defendants an actual controversy in which the plaintiff and the cross-defendants assert and propose to exercise, and the defendants deny, their

383 authority to prohibit, control, regulate or manage the business, affairs or acts of the defendants under any of the provisions of said Holding Company Act.

26. This is a civil suit in equity, wherein the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs, arises under the Constitution and laws of the United States, and is within the equity jurisdiction of this Court. This is also a case of actual controversy involving civil and property rights of which this

384 Court, pursuant to Section 274 (d) of the Judicial Code (Title 28, Section 400, U. S. C. A.) has jurisdiction to declare rights and other legal relations and the defendants are interested parties petitioning for such declaration and for such further relief by injunction or otherwise as may be necessary or proper.

27. Section 2(a) of said Holding Company Act defines (in its numbered paragraphs hereinafter

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set forth) the following, among other, terms: (3) Electric utility company, (4) Gas utility company, (5) Public-utility company, (7) Holding company, (8) Subsidiary company, (9) Holding-company system, (10) Associate company, (11) Affiliate, (12) Registered holding company, (16) Security, (17) Voting security, (19) Service contract, (20) Sales contract, (21) Construction contract, (29) Integrated public-utility system. When such terms are hereinafter used, they are used in their statutory sense, as thus defined in said Section 2(a) of said Holding Company Act.

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28. Defendant Bond and Share is a holding company, in that it owns ten per centum or more (the exact percentages being hereinafter stated in paragraph 39 and Exhibit VI hereof) of the outstanding voting securities of the following named defendants, each of which is likewise a holding company, to wit: American Gas, American Power & Light Company, Electric Power & Light Corporation and National Power & Light Company. Defendant Bond and Share also owns approximately seven per centum of the outstanding voting securities of defendant United Gas Corporation, which is also a holding company.

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Descriptions of each of said holding company defendants and of the subsidiary companies thereof and of the facts and circumstances which constitute each of said defendants herein a holding company are hereinafter set forth in paragraphs 32 to 36 hereof.

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Defendant Bond and Share does not own, control, or hold with power to vote any voting securities of any of the holding company defendants or operating company defendants other than as above set forth.

Defendant Bond and Share's investment in the securities of the holding company defendants herein has exceeded, and now exceeds, the sum of $200,000,000. Defendant Bond and Share also owns bonds of operating public utility subsidiary companies of the holding company and operating company defendants which cost said defendant approximately $10,600,000 and which have a present value of approximately $11,700,000.

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Defendant Bond and Share now has outstanding 1,155,655 shares of $6 Preferred Stock, 300,000 shares of $5 Preferred Stock and 5,267,147 shares of Common Stock held, in the aggregate, by approximately 130,000 stockholders who reside in every state in the United States and in many foreign countries. Each share of stock has one vote. More than a majority of said stockholders reside outside the State of New York, in which said defendant is incorporated. No stockholder owns more than 1.1 per centum of the presently outstanding stock of said defendant Bond and Share.

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29. Defendant Bond and Share also owns more than ten per centum of the outstanding voting securities of American & Foreign Power Company Inc., which is a holding company, through its ownership of voting securities of certain holding com-

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panies and of certain public utility companies which operate solely in countries outside the boundaries of the United States.

Said defendant Bond and Share also has investments in the common stock and other securities of other public utility holding companies. These investments, while substantial in amount, are small in proportion to the aggregate voting stock of said companies and insufficient to constitute said defendant either a holding company or an affiliate of said companies as defined in said Holding Company Act, and said defendant has no service arrangement, common directors or other affiliation with said companies except that of investment.

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30. Defendant Bond and Share also owns all the outstanding capital stock of Ebasco Services Incorporated, a corporation organized under the laws of New York, which furnishes certain services, as more fully alleged in paragraph 38 hereof, to all or substantially all of the public utility companies which are subsidiary companies of the defendant holding companies above mentioned, other than defendant American Gas, to which company and its subsidiary companies no such services are furnished. Ebasco Services Incorporated in turn owns all or substantially all, of the outstanding capital stock of (a) Two Rector Street Corporation, a New York corporation which owns an office building at No. 2 Rector Street, New York, N. Y., (b) Emprezas Electricas Brasileiras, S. A., a corporation of the Republic of Brazil which renders certain services to public utility companies opera-

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394 ting in Brazil which are indirect subsidiary companies of the above mentioned American & Foreign Power Company Inc., and (c) Phoenix Engineering Corporation, a Delaware corporation which renders engineering services to certain of the public utility companies which are subsidiary companies of the holding company defendants.

31. By the terms of paragraph (9) of Section 2(a) of said Holding Company Act, the defendant Bond and Share and the other holding company
395 and operating company defendants and the subsidiary companies of said defendants, consisting principally of operating public utility companies, constitute a so-called holding company system, and each of the other defendants individually with its subsidiary holding and operating companies likewise constitutes a so-called holding company system. These companies, together with their interrelations and the principal business done by each of them, are described in the following paragraphs.

32. Defendant American Power & Light Com-
396 pany, hereinafter called "American Company", is a holding company in that it owns more than ten per centum (the respective percentages being indicated after the name of each company) of the outstanding voting securities of the following defendants and of the following electric and gas utility companies which are conducting and for several years last past have conducted electric and/or gas utility businesses and incidentally in some cases other businesses in the states hereinafter mentioned:

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Central Arizona Light and Power Company (98.04 %) generates and distributes electric energy, and distributes natural gas, solely in Arizona. Florida Power & Light Company (100 %) generates and distributes electric energy and gas solely in Florida. Kansas Gas and Electric Company (90.55 %) generates and distributes electric energy solely in Kansas, except for the distribution of electric energy to a few customers in Missouri. Minnesota Power & Light Company (93.03 %) generates and distributes electric energy in Minnesota and also makes certain sales of electric energy at the Minnesota-Wisconsin boundary. Defendant The Montana Power Company (99.75 %) generates and distributes electric energy and distributes natural gas in Montana and has a subsidiary company, Idaho Transmission Company, which distributes and delivers electric energy in Idaho and has an insignificant amount of property in Montana. Montana Power Gas Company (99.99 %) produces and transmits natural gas solely in Montana. Defendant Nebraska Power Company (88.39 %) generates and distributes electric energy in Nebraska, sells electric energy at or near the Iowa-Nebraska boundary and has a subsidiary company, Citizens Power & Light Company, which distributes in Iowa electric energy purchased in Nebraska and owns an insignificant amount of property in Nebraska. New Mexico Electric Service Company (99.99 %) generates and distributes electric energy solely in New Mexico. Northern Power Company (98.80 %) transmits and distributes in Wisconsin

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400 electric energy purchased at the Minnesota-Wisconsin boundary. Northwestern Electric Company (67.63 %) generates and distributes electric energy in Oregon and Washington. Defendant Pacific Power & Light Company (94.66 %) generates and distributes electric energy in Washington and Oregon and has a subsidiary company, Inland Power & Light Company, which generates and distributes electric energy in Washington and generates electric energy in Oregon. Portland Gas & Coke Company (84.03 %) manufactures and dis-
401 tributes gas solely in Oregon, except for comparatively small distribution of such gas in Washington. Superior Water, Light and Power Company (66.56%) distributes electric energy and gas in Wisconsin. Texas Electric Service Company (98.-96%) generates and distributes electric energy solely in Texas. Texas Power & Light Company (96.-76%) generates and distributes electric energy solely in Texas. Texas Public Utilities Corporation (99.-95 %) distributes electric energy and sells natural gas at wholesale solely in Texas. Defendant The
402 Washington Water Power Company (99.68 %) generates and distributes electric energy in Washington and Idaho and has a subsidiary company, Chelan Electric Company, which generates electric energy in Washington and Idaho.

Defendants The Montana Power Company, Nebraska Power Company, Pacific Power & Light Company and The Washington Water Power Company are holding companies in that they own all or substantially all of the voting securities of the

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companies above designated as their respective subsidiary companies.

None of the electric properties of the companies mentioned in this paragraph 32 is physically interconnected or is capable of physical interconnection with the properties of the other companies mentioned in this paragraph 32 into an "integrated public-utility system", as defined in Section 2(a)(29) of the Act, which under normal conditions may be economically operated as a single interconnected and coordinated system, except that:

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(a) The properties of defendants The Washington Water Power Company and The Montana Power Company, most of the properties of Pacific Power & Light Company and the properties of Northwestern Electric Company, Inland Power & Light Company, Idaho Transmission Company and Chelan Electric Company are interconnected by means of transmission lines.

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(b) The properties of Minnesota Power & Light Company, Northern Power Company and Superior Water, Light and Power Company, are interconnected by means of transmission lines.

(c) The properties of defendant Nebraska Power Company and its subsidiary company, Citizens Power & Light Company, are interconnected by means of distribution lines.

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(d) Most of the properties of Texas Electric Service Company, Texas Power & Light Company and Texas Public Utilities Corporation, are interconnected by means of transmission lines.

A further description of said subsidiary companies of defendant American Company, and of other and non-utility direct and indirect subsidiary companies of said American Company, the business done by them and the extent to which said com-
407 panies, or any thereof, are engaged in transmitting or selling electric energy or gas across state boundaries is given in Exhibit I, attached hereto and by reference made a part hereof.

33. DEFENDANT ELECTRIC POWER & LIGHT CORPORATION, hereinafter called "Electric Company", is a holding company in that it owns more than ten per centum (the respective percentages being indicated after the name of each company) of the outstanding voting securities of the following de-
408 fendant and of the following electric and gas utility companies which are conducting and for several years last past have conducted electric and/or gas utility businesses and incidentally in some cases other businesses in the states hereinafter mentioned:

Arkansas Power & Light Company (90.22%) generates and distributes electric energy and distributes natural gas in Arkansas and both sells and purchases electric energy at state boundaries.

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Dallas Power & Light Company (69.98 %) generates and distributes electric energy solely in Texas. Louisiana Power & Light Company (95.43 %) generates and distributes electric energy and distributes natural gas in Louisiana and sells electric energy at state boundaries. Mississippi Power & Light Company (94.03 %) generates and distributes electric energy and distributes natural gas in Mississippi and purchases electric energy at state boundaries. New Orleans Public Service Inc. (95.08 %) generates and distributes electric energy 410
and distributes natural gas (in emergencies manufactured gas) solely in Louisiana. Defendant Utah Power & Light Company (92.38 %) generates and distributes electric energy in Utah, Idaho and Wyoming and is itself a holding company in that it owns all or substantially all of the outstanding voting securities of: (a) Utah Light and Traction Company, which owns but has leased to defendant Utah Power & Light Company electric generating plants and distributing systems in Utah; (b) The Western Colorado Power Company, which generates and distributes electric energy in Colorado; 411
and (c) Bountiful Light and Power Company, which distributes electric energy in Utah.

Defendant Electric Company also owns all the outstanding voting securities of holding company defendant Power Securities Corporation, which is a holding company in that it owns 71.75 % of the outstanding voting securities of defendant Idaho Power Company, which generates and distributes electric energy in Idaho and Oregon. Said defendant Idaho Power Company is also itself a holding

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company in that it owns all or substantially all of the outstanding voting securities of its subsidiary company, Nevada Power Company, which distributes electric energy in Nevada.

Defendant Electric Company also owns 61.58 % of the outstanding voting securities of defendant United Gas Corporation, referred to in paragraph 34 hereof.

None of the electric properties of the companies mentioned in this paragraph 33 is physically interconnected or is capable of physical interconnection

413 with the properties of the other companies mentioned in this paragraph 33 into an "integrated public-utility system" which under normal conditions may be economically operated as a single interconnected and coordinated system, except that:

(a) The properties of defendants Idaho Power Company and Utah Power & Light Company and the properties of Utah Light and Traction Company, Bountiful Light and Power Company and Nevada Power Company

414 are interconnected by means of transmission lines.

(b) The properties of Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company and New Orleans Public Service Inc. are interconnected by means of transmission lines in the case of the Arkansas, Louisiana and Mississippi companies, and in the case of the New

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Orleans Public Service Inc. by means of an emergency interconnection between the Louisiana company and the New Orleans company at the New Orleans generating station of the latter company.

A further description of said direct and indirect subsidiary companies of defendant Electric Company, and of other and non-utility direct and indirect subsidiary companies of said Electric Company, the business done by them and the extent to which said companies, or any thereof, are engaged in transmitting or selling electric energy or gas across state boundaries is given in Exhibit II, attached hereto and by reference made a part hereof.

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34. DEFENDANT UNITED GAS CORPORATION, hereinafter called "United Company", is a holding company in that it owns all of the outstanding voting securities of its principal subsidiary company, defendant United Gas Public Service Company, which is engaged in the production of natural gas and oil and is a gas utility company engaged as such in the distribution of natural gas in Texas, Louisiana and Mississippi and also has natural gas pipe lines which extend into Alabama and Florida.

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Defendant United Gas Public Service Company is itself a holding company in that it owns all or substantially all of the outstanding voting securities of: (a) defendant Houston Gulf Gas Company, which is engaged in the production of natural gas

418 and oil, is a gas utility company engaged as such in the distribution of natural gas in Texas and also is itself a holding company in that it owns all or substantially all of the outstanding voting securities of Houston Gas and Fuel Company, which distributes natural gas in Houston, Texas; (b) Northern Texas Utilities Company, which operates natural gas production and distribution facilities in Texas and (c) Southern Gas Utilities, Inc., which operates natural gas production and distribution facilities in Texas.

419 Defendant United Company also owns substantial stock interests in Mississippi River Fuel Corporation, operating in Louisiana, Arkansas, Missouri and Illinois and El Paso Natural Gas Company which with its subsidiary companies, operates in New Mexico, Texas, Arizona and the Republic of Mexico. Defendant United Gas Public Service Company also owns substantial stock interests in Monroe Gas Company and Natural Gas Company, Inc., operating in Louisiana. None of these four companies is operated as a part, or considered to

420 be a part of the natural gas system of said United Gas Public Service Company.

The natural gas properties of defendant United Gas Public Service Company and its several subsidiary companies above named comprise a single system for the production, transportation and distribution of gas, such system being fully interconnected either through transportation facilities of defendant United Gas Public Service Company and its subsidiary companies (or through trans-

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portation facilities belonging to other natural gas companies which have contracted to transport gas produced by said United Gas Public Service Company or its subsidiary companies), except in the case of a portion of said system in the Amarillo field in northern Texas which is not yet physically interconnected, but which is capable of physical interconnection, with the remainder of said system.

A further description of said direct and indirect subsidiary companies of defendant United Company, and of other and non-utility direct and indirect subsidiary companies of said United Company, the business done by them and the extent to which said companies, or any thereof, are engaged in transporting or selling gas across state or international boundaries is given in Exhibit III, attached hereto and by reference made a part hereof.

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35. DEFENDANT NATIONAL POWER & LIGHT COMPANY, hereinafter called "National Company", is a holding company in that it owns more than ten per centum (the respective percentages being indicated after the name of each company) of the outstanding voting securities of the following electric and gas utility companies which are conducting and for several years last past have conducted electric and/or gas utility businesses and incidentally in some cases other businesses in the states hereinafter mentioned:

423

Birmingham Electric Company (100%) distributes and, in emergencies generates, electric energy solely in Alabama. Carolina Power & Light Com-

424 pany (93.53%) generates and distributes electric energy in North Carolina and South Carolina and both purchases and sell electric energy at state boundaries. Holston River Electric Company (100%) distributes electric energy solely in Tennessee. Houston Lighting & Power Company (91-.32%) generates and distributes electric energy solely in Texas. Memphis Power & Light Company (86.79%) generates and distributes electric energy and distributes natural gas (in emergencies manufactured gas) in the State of Tennessee and also
425 both sells and purchases small amounts of electric energy at state boundaries. Roanoke River Power Company (100%) owns an undeveloped hydro-electric site and adjacent lands in Virginia and North Carolina and transmits certain electric energy through Virginia for delivery to the above named Carolina Power & Light Company. Tennessee Public Service Company (99.31%) generates and distributes electricity in the State of Tennessee and purchases electric energy at the Tennessee-North Carolina boundary. West Tennessee Power
426 & Light Company (99.99%) generates and distributes electric energy and distributes natural gas (in emergencies manufactured gas) solely in Tennessee.

Defendant National Company also owns 99.66% of the outstanding voting securities of holding company defendant Lehigh Power Securities Corporation, hereinafter called "Lehigh Company," which has as subsidiary companies: (a) defendant Pennsylvania Power & Light Company, which generates

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and distributes electric energy, manufactures and distributes manufactured gas and distributes natural gas in Pennsylvania, effects certain interchanges of electric energy which may or does cross state boundaries and in turn has as subsidiary companies: Lehighton Electric Light and Power Company, which distributes electric energy in Pennsylvania; Stanton Operating Company, which operates an electric generating plant in Pennsylvania, and Conestoga Transmission Company, which owns but has leased to defendant Pennsylvania Power & 428
Light Company an electric transmission line in Pennsylvania; (b) Lehigh Valley Transit Company, which has filed a petition for reorganization under Section 77B of the Bankruptcy Act and is not a defendant herein, but which has a subsidiary company, defendant Easton Consolidated Electric Company, which in turn has a subsidiary company, The Edison Illuminating Company of Easton. Defendants Lehigh Company, Pennsylvania Power & Light Company and Easton Consolidated Electric Company are holding companies in that they each own more than 10 per centum of the voting securities of 429
the companies above designated as their respective subsidiary companies.

None of the electric properties of the companies mentioned in this paragraph 35 is physically interconnected or is capable of physical interconnection with the properties of the other companies mention in this paragraph 35 into an "integrated public-utility system" which under normal conditions may be economically operated as a single interconnected and coordinated system, except that:

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(a) Substantially all of the properties of defendant Pennsylvania Power & Light Company and its electric utility subsidiary companies and of Lehigh Valley Transit Company are interconnected by means of transmission lines.

(b) The properties of Carolina Power & Light Company, Tennessee Public Service Company, Holston River Electric Company and Roanoke River Power Company are interconnected (in part by means of transmission lines owned by other interests which have contracted to transmit electric energy for delivery to Carolina Power & Light Company) by means of transmission lines.

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(c) The properties of Memphis Power & Light Company and West Tennessee Power & Light Company are interconnected by means of transmission lines.

A further description of said direct and indirect subsidiary companies of defendant National Company and of other and non-utility direct and indirect subsidiary companies of said National Company, the business done by them and the extent to which said companies, or any thereof, are engaged in transmitting or selling electric energy across state boundaries is given in Exhibit IV attached hereto and by reference made a part hereof.

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In addition to the companies named in said Exhibit IV, defendant National Company also owns

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approximately 17% of the outstanding voting securities of Memphis Natural Gas Company, a natural gas pipe line company which transmits gas from Louisiana through Arkansas and Mississippi into Tennessee. The latter company is a controlled subsidiary company of another corporation in no way related to defendant National Company or its subsidiary companies.

36. DEFENDANT AMERICAN GAS is a holding company in that it owns all or substantially all of the outstanding voting securities of the following defendants and of the following electric utility companies which are conducting and for several years last past have conducted electric utility businesses and incidentally in some cases other businesses in the states hereinafter mentioned:

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Defendant Appalachian Electric Power Company generates and distributes electric energy in Virginia and West Virginia, sells electric energy at wholesale in Tennessee and has subsidiary companies: Kentucky and West Virginia Power Company, Inc., which generates and distributes electric energy solely in Kentucky and Kingsport Utilities, Incorporated, which distributes electric energy solely in Tennessee. Defendant Atlantic City Electric Company generates and distributes electric energy solely in New Jersey and has a subsidiary company, Deepwater Operating Company, which operates an electric generating plant in New Jersey. Defendant The Ohio Power Company generates electric energy in Ohio and West Virginia, distributes elec-

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436 tric energy solely in Ohio and has a subsidiary company, Beech Bottom Power Company, Inc., which operates an electric generating plant in West Virginia. Defendant The Scranton Electric Company generates and distributes electric energy solely in Pennsylvania and has a subsidiary company, Stanton Operating Company, which operates an electric generating plant in Pennsylvania. Indiana General Service Company generates and distributes electric energy solely in Indiana. Indiana & Michigan
437 Electric Company generates and distributes electric energy in Indiana and Michigan. Kanawha Valley Power Company operates electric generating plants in West Virginia and sells the entire output of electric energy from such plants to defendant Appalachian Electric Power Company. Southern Ohio Public Service Company operates an electric generating plant in Ohio and sells the entire output of electric energy from such plant to defendant The Ohio Power Company. Wheeling Electric Company generates electric energy in West Virginia and distributes electric energy in West Virginia and
438 Ohio.

Defendant Appalachian Electric Power Company is a holding company in that it owns all or substantially all of the voting securities of the companies above designated as its subsidiary companies. Defendants The Ohio Power Company, The Scranton Electric Company and Atlantic City Electric Company are holding companies in that they each own 50 per centum of the voting securities of the companies above designated as their respective subsidiary companies.

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The properties of all the companies mentioned in this paragraph 36 except those of defendant The Scranton Electric Company and defendant Atlantic City Electric Company are interconnected by means of transmission lines.

A further description of said subsidiary companies of the defendant American Gas and of other and non-utility direct or indirect subsidiary companies of said American Gas, the business done by them and the extent to which said companies, or any thereof, are engaged in transmitting electric energy across state boundaries is given in Exhibit V, attached hereto and by reference made a part hereof.

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37. The investments of the holding company defendants in the securities of their subsidiary companies have amounted to, and now amount to, many millions of dollars.

The respective investments of the holding company defendants are, in each case, in common stock and in certain cases are also in bonds, notes, debentures or preferred stocks. The respective investments of the operating company defendants, in their own properties and/or in the securities of their respective subsidiary companies amount (in addition to investments represented by securities held by the holding company defendants) in each case to millions of dollars represented by bonds, stocks and other securities held by the public. Such securities so held by the public are widely distributed in the states in which said subsidiary companies respectively operate and in other states in

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the United States and in some instances in foreign countries.

38. Heretofore and for many years defendant Bond and Share maintained for the benefit of all or substantially all of the public utility operating subsidiary companies of the holding company defendants (other than those of defendant American Gas), a service organization which rendered advice and counsel on operating and financial problems, technical assistance in engineering, accounting, rate-
442 making, commercial and other matters, secretarial and fiscal services, which could be most advantageously conducted by a central organization. Said organization was maintained by defendant Bond and Share at its offices in New York City, and said defendant Bond and Share was compensated for said services by a fee based primarily on a percentage of operating revenues of the companies served.

Subsequent to the passage of said Holding Company Act and prior to the filing of the original Bill of Complaint herein, defendant Bond and
444 Share transferred said service organization and assigned the contracts for such services (but not the contracts for services to the holding company defendants which were cancelled as alleged in paragraph 10 of the Answer) to its wholly-owned subsidiary company referred to in paragraph 30 hereof, to-wit, Ebasco Services Incorporated, which has qualified to do business in the various states in which the public utility operating subsidiary companies served by it conduct substantial operations.

Said Ebasco Services Incorporated is now

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rendering and proposes to continue to render the services above set forth to the operating public utility subsidiary companies of the holding company defendants other than defendant American Gas. None of said services above described constitutes interstate commerce, but in the performance of said services the mails and facilities of commerce are used. Also Ebasco Services Incorporated, acting for its operating company clients for the purpose of placing orders in the names of said companies and not for itself or in its own behalf, negotiates contracts for the purchase of materials and 446
supplies by such client operating public utility companies. In the rendition of these purchasing services, subsidiary companies of defendant American Gas have been, but no longer are, permitted to make purchases, and receive the benefits arising, under certain, but not all, of these contracts. Such purchases by said client operating companies include the purchase of materials and supplies which move directly in interstate commerce from the manufacturer or wholesaler to such operating companies and Ebasco Services Incorporated arranges for the 447
shipment or transportation of a part of such materials and supplies. In the performance of services rendered by said Ebasco Services Incorporated, there are employed approximately 350 individuals of whom only approximately ten are employed in the Purchasing Department thereof, and while the volume of purchases, by client companies is large, the purchasing service rendered by said Ebasco Services Incorporated is a minor and severable part of the total services performed by it.

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Included among the operating utility companies to which defendant Bond and Share rendered, and to which Ebasco Services Incorporated now renders, services as aforesaid, are all or substantially all of those named above (other than the subsidiary companies of defendant American Gas), including those which operate in countries entirely without the boundaries of the United States, those which operate entirely within a single state of the United States, and those which operate in more than one state and in the operations of which electric
449 energy and gas are transmitted across state boundaries. For the services rendered to such operating public utility companies, service fees have been and are charged, based upon the operating revenues of the companies served, and said fees, which amount on the present basis to approximately 1.1 per centum of the aggregate operating revenues of such public utility companies operating in the United States, have yielded and may yield on such basis an aggregate amount in excess of the cost of rendering such services. Such fees may enter into the rates
450 locally charged within the several states for public utility services rendered by such companies, and are subject to the jurisdiction of the proper state authorities in the several states. Said fees are not based upon and have no relation to the generation or transmission of electric energy or gas, whether across state boundaries or otherwise.

39. Briefly, the intercorporate relations and the system of operations of defendant Bond and Share

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and the holding company defendants are as follows:

Defendant Bond and Share in its own corporate capacity owns the following percentages of the voting securities of the holding company defendants, to wit: defendant American Company 20.70 per centum, defendant Electric Company 47.20 per centum, defendant National Company 46.56 per centum, defendant American Gas 17.51 per centum, defendant United Company 7 per centum, defendant Power Securities Corporation none, defendant Lehigh Company none and defendant Easton Consolidated Electric Company none, and has such degree of influence and control over said companies as is inherent in such stock ownership. Such influence and control is exercised by voting the stock owned by defendant Bond and Share, and not by common officers, directors, or employees, or direct participation in management, of such other defendants. A statement of the capitalization of said holding company defendants and the voting stock ownership therein of defendant Bond and Share is set forth in Exhibit VI, attached hereto and by reference made a part hereof. Defendant Bond and Share is not a public utility company. It is not engaged in commerce with foreign nations or among the several states in the sale of electric energy or gas, or otherwise. Although defendant Bond and Share uses the mails and other facilities of commerce as an incident to its business, its sole corporate business (since the transfer of its service organization as stated in paragraph 38 hereof) is

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454 the ownership of securities in the above mentioned companies and the ownership of its other investments and the conduct of matters incidental thereto, such as the occasional lending of money, the receipt and disbursement of interest and dividend payments, and the like.

There are no directors, officers or employees common to the defendant Bond and Share or said Ebasco Services Incorporated and the other defendants or their subsidiary companies, except as follows: the Chairman of the Board of Directors of the
455 defendant Bond and Share is Chairman of the Board of Directors of defendant American Gas, and one other individual, is a director of both said companies and a vice-president of defendant Bond and Share.

Of the holding company defendants above mentioned, American Company, Electric Company, National Company, United Company, Power Securities Corporation and Lehigh Company do no other business and perform no other function than that of companies holding for investment the common
456 stock and other securities of their subsidiary companies above described, voting such stock for the election of directors and such other corporate purposes as require stockholders vote, the occasional lending of money or lending of credit to said operating companies, collecting interest and dividends and paying same out to their creditors and stockholders. None of them is a public utility company and none of them is engaged in commerce with foreign nations or among the several states in the

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sale of electric energy or gas, or otherwise. They use the mails or other facilities of commerce only incidentally in furtherance of such business. They exercise voting control through stock ownership of their subsidiary operating companies, which are separately officered, staffed, directed and financed. The operating companies subsidiary to said holding companies are engaged primarily in the business of distributing electricity or gas to the public at retail under franchises or other authority of the states in which they operate. None of the officers, directors or employees of any of the subsidiary companies of the foregoing holding company defendants is an officer, director or employee of said holding company defendants and the operations of each of said subsidiary companies are conducted entirely separately, and are distinct, from the operations of said holding company defendants. Defendant Easton Consolidated Electric Company is primarily a holding company with respect to the securities of transportation companies, but also holds the securities of The Edison Illuminating Company of Easton, which owns, but does not operate, an electric distribution property as described in Exhibit IV. Said defendant's business is generally similar to that of the holding company defendants above described. It transacts no business whatever in interstate commerce.

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Defendant American Gas, in addition to owning the stocks of the companies hereinabove named as its subsidiary companies and exercising voting control of said companies, furnishes, through use of

460 its own personnel, to its subsidiary operating utility companies managerial, financial, accounting, auditing, commercial, purchasing, valuation, engineering, insurance, statistical and other services. Various officers and directors of defendant American Gas also act as officers and directors of its public utility subsidiary companies, performing for such subsidiary companies the duties of the offices held and supplementing the local operating organizations of such subsidiary companies, which organizations are separate and distinct from those of de-
461 fendant American Gas. Defendant American Gas is not a public utility company. It is not engaged in commerce with foreign nations or among the several states in the sale of electric energy or gas, or otherwise.

In addition to stock ownership in the public utility companies referred to in paragraphs 32 to 36, the holding company defendants and the operating company defendants, as well as certain of their subsidiary companies, own common stock, and, in some cases, other securities of subsidiaries which
462 are not public utility companies as defined in said Holding Company Act.

40. As fully set forth in said Exhibits I, II, III, IV and V the public utility companies therein and hereinabove described are, with few and unimportant exceptions, engaged primarily in the generation and distribution of electric energy, or the production and distribution of gas, within the states in which they respectively operate. The generation

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of such electric energy or the production of such gas and the distribution thereof to the public within the several states is not and does not directly affect commerce between the states and is wholly within the jurisdiction and control of the states, and the regulatory authorities thereof, within which such energy or gas is generated, produced or distributed. Such companies as transmit electric energy or gas across state boundaries do so ordinarily and primarily for distribution at retail to customers of such companies within the states to which such energy or gas is transmitted. Such transmission of electric energy or gas across state boundaries does not constitute a sale or sales in interstate commerce and is only subject to Federal jurisdiction and regulation to the extent, if any, that such transmission across state boundaries impairs or tends to impair the safety, health, or morals of any person. Sales of electric energy or gas across state boundaries are a minor part of the business done by said public utility companies, and in practically every case a minor part of the business done by the particular company making such sales, and comprise a business which is severable from said companies' intrastate business. Said companies are doing a predominantly intrastate business within the states in which they operate subject to the jurisdiction of such states and of the regulatory authorities thereof and not to Federal jurisdiction.

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41. None of the defendants has been exempted, or, under the terms of said Act, is entitled to apply

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for exemption from any provision of said Act under Section 3 or any other provision thereof providing for the exemption of holding companies except that the following defendants, to wit: (a) The Washington Water Power Comapny in the American Company group; (b) Pennsylvania Power & Light Company, and Easton Consolidated Electric Company, in the National Company group and (c) Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company and Atlantic City Electric Company, in the American Gas group, are temporarily exempted as holding companies from the provisions of the Act under the terms of a rule of the plaintiff set forth in Exhibit A attached to the Bill herein, but said defendants have no means of knowing whether said exemption will continue after February 2, 1936. Further, said exemption exists and will continue in the sole discretion of the plaintiff, all without judicial review, except upon issues of law, decisions of the Commission as to fact being conclusive if supported by substantial evidence.

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468 All of the holding company defendants and the remaining companies mentioned in paragraphs 32 to 36 hereof are subsidiary companies of the defendant Bond and Share and of their respective holding companies within the meaning of Section 2(a) (8) of said Holding Company Act and none of said companies is entitled to exemption or to claim exemption as a subsidiary company under the terms of Section 2(a) (8) and 3(b) of said Act, or otherwise, or any other section thereof. Exemption of

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said holding and operating company defendants as holding companies would be comparatively valueless to them as they would remain subsidiary companies subject to all, or practically all, the provisions of said Act.

42. In the course of their business, defendant Bond and Share and its subsidiary service company, Ebasco Services Incorporated, and the holding company and operating company defendants use the United States mails and the facilities of commerce for various lawful purposes, including the transportation of their officers and employees and the transmission of lawful matter affecting the business of said companies and not in any way tending to impair the safety, health or morals of any person; said matter does not endanger the mails or the facilities of transmission thereof or the facilities of commerce, nor is such matter calculated to, nor does it, defraud or otherwise injure or offend the sender or recipient thereof, or any other person or corporation, directly or indirectly.

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43. Section 4(a) of said Holding Company Act provides that after December 1, 1935, unless a holding company is registered under Section 5 of said Act, it shall be unlawful for such holding company, directly or indirectly—

> "(1) to sell, transport, transmit, or distribute, or own or operate any utility assets for the transportation, transmission, or distribution of, natural or manufactured gas or electric energy in interstate commerce;

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(2) by use of the mails or any means or instrumentality of interstate commerce, to negotiate, enter into, or take any step in the performance of, any service, sales, or construction contract undertaking to perform services or construction work for, or sell goods to, any public-utility company or holding company;

(3) to distribute or make any public offering for sale or exchange of any security of such holding company, any subsidiary company or
473 affiliate of such holding company, any public-utility company, or any holding company, by use of the mails or any means or instrumentality of interstate commerce, or to sell any such security having reason to believe that such security, by use of the mails or any means or instrumentality of interstate commerce, will be distributed or made the subject of a public offering;

(4) by use of the mails or any means or instrumentality of interstate commerce, to ac-
474 quire or negotiate for the acquisition of any security or utility assets of any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company;

(5) to engage in any business in interstate commerce; or

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(6) to own, control, or hold with power to vote, any security of any subsidiary company thereof that does any of the acts enumerated in paragraphs (1) to (5), inclusive, of this subsection."

The activities forbidden by paragraphs (3), (4) and (6) of said Section 4(a) are essential to the normal and ordinary conduct of the business of each of the defendants and the use, conversation and development of its properties. It is essential and necessary that each of the defendants, to maintain the integrity of its property and investments, own, control and hold with power to vote, the securities of its subsidiary companies which do the things prohibited in paragraphs (1) to (5), inclusive, of said Section 4(a) as and to the extent hereinbefore alleged.

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It is necessary for defendants, Appalachian Electric Power Company, The Ohio Power Company, Utah Power & Light Company, Idaho Power Company, Pacific Power & Light Company and The Washington Water Power Company, themselves to transmit electric energy across state boundaries for distribution in states in which they operate, as hereinbefore averred.

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It is necessary for defendants, The Montana Power Company, Nebraska Power Company and Pennsylvania Power & Light Company, themselves to maintain and operate transmission lines to points at or near state boundaries, as hereinbefore set forth, where electric energy is sold to, interchanged with, or purchased from, subsidiary com-

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panies or non-associate electric utility companies.

It is necessary for defendant United Gas Public Service Company to transport natural gas across state boundaries for distribution in states in which it operates, as hereinbefore averred.

It is necessary for defendant American Gas to use the mails and facilities of interstate commerce to perform the services which it renders to its subsidiary companies, as alleged in paragraph 39 hereof.

479 Section 4(b) of said Act provides as follows:

> "(b) Every holding company which has outstanding any security any of which, by use of the mails or any means or instrumentality of interstate commerce, has been distributed or made the subject of a public offering subsequent to January 1, 1925, and any of which security is owned or held on October 1, 1935 (or, if such company is not a holding company on that date, on the date such company becomes a holding company) by persons not resident in the State in which such holding company is organized, shall register under Section 5 on or before December 1, 1935 or the thirtieth day after such company becomes a holding company, whichever date is later."

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Said Section 4(b) is applicable to each of the defendants, except defendant Easton Consolidated Electric Company, since such defendants have distributed and made the subject of public offering substantial amounts of their respective securities

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by use of the mails or means or instrumentalities of interstate commerce subsequent to January 1, 1925, and substantial amounts of said securities were owned or held on October 1, 1935 and are so owned or held on the date hereof by persons not resident in the respective states in which such defendants are respectively organized. By reason of the facts in this paragraph recited such defendants are directed by the terms of said Section 4(b) to register under Section 5 of said Act on or before December 1, 1935, even though they do not now engage, and may not in the future engage, in any commerce with foreign countries or among the several states.

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An unregistered holding company which engages in any of the transactions prohibited by Section 4(a) is within the purview of the following provisions of Section 26(b):

> "(b) Every contract made in violation of any provision of this title or of any rule, regulation, or order thereunder, and every contract heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this title, or any rule, regulation, or order thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, regulation, or order, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person

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who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule, regulation, or order."

Each of the defendants has existing many contracts, relationships and practices, the performance of which involve violations of provisions of said Act, and which may also be subjected to rules, regu-
485 lations or orders of plaintiff Commission which would likewise be violated. Among such contracts and relationships are those between defendant Bond and Share's wholly-owned subsidiary, Ebasco Services Incorporated, and others of the defendants and their subsidiaries for the performance of services, and like arrangements between defendant American Gas and its subsidiaries. Such contracts and relationships are of value to the parties thereto, and their termination would result in monetary losses, and losses in economy and efficiency of operation.

486 An unregistered holding company and its officers and employees are also within the purview of the following penalty provisions of Section 29:

"Any person who wilfully violates any provision of this title or any rule, regulation, or order thereunder (other than an order of the Commission under subsection (b), (d), (e), or (f) of section 11), * * * shall upon conviction

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be fined not more than $10,000 or imprisoned not more than two years, or both, except that in the case of a violation of a provision of subsection (a) or (b) of section 4 by a holding company which is not an individual, the fine imposed upon such holding company shall be a fine not exceeding $200,000; but no person shall be convicted under this section for the violation of any rule, regulation, or order if he proves that he had no knowledge of such rule, regulation, or order."

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Each of the defendants' officers and employees are engaged in the discharge of duties and in the performance of contracts which may subject them to the fines and imprisonment prescribed in said section; the acts required of them in the normal discharge of their duties, subject to the penalties of said section, are many, numerous and continuous; the penalties of fines and imprisonment for successive and different acts are, or may be contended to be, cumulative, as a result of which the officers and employees of each of the defendants are presently threatened with liability of fine and imprisonment for the discharge of their normal duties, performance of company contracts, and the normal conduct of the business operations of the respective defendants; such threat or liability of fine and imprisonment has a deterring and demoralizing effect upon the personnel of the defendants, and, unless relief is granted therefrom by decree in this cause, constitutes an irreparable injury to the defendants and their properties and business.

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44. Section 5(a) of said Holding Company Act provides that on or at any time after October 1, 1935, any holding company may register by filing with the plaintiff Securities and Exchange Commission a notification of registration, in such form as said Commission may by rules and regulations prescribe, and such holding company shall be deemed to be registered upon receipt by said Commission of such notification of registration. Section 5(b) of said Act provides that it shall be the duty of every registered holding company to file with the said Commission, within such reasonable time after registration as said Commission shall fix, a registration statement in such form as the said Commission shall prescribe, and that such registration statement shall include:

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"(1) such copies of the charter or articles of incorporation, partnership, or agreement, with all amendments thereto, and the bylaws, trust indentures, mortgages, underwriting arrangements, voting-trust agreements, and similar documents, by whatever name known, of or relating to the registrant or any of its associate companies as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers;

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(2) such information in such form and in such detail relating to, and copies of such documents of or relating to, the registrant and its

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associate companies as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers in respect of—

(A) the organization and financial structure of such companies and the nature of their business;

(B) the terms, position, rights, and privileges of the different classes of their securities outstanding; 494

(C) the terms and underwriting arrangements under which their securities, during not more than the five preceding years, have been offered to the public or otherwise disposed of and the relations of underwriters to, and their interest in, such companies;

(D) the directors and officers of such companies, their remuneration, their interest in the securities of, their material contracts with, and their borrowings from, any of such companies; 495

(E) bonus and profit-sharing arrangements;

(F) material contracts, not made in the ordinary course of business, and service, sales, and construction contracts;

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(G) options in respect of securities;

(H) balance sheets for not more than the five preceding fiscal years, certified, if required by the rules and regulations of the Commission, by an independent public accountant;

(I) profit and loss statements for not more than the five preceding fiscal years, certified, if required by the rules and regulations of the Commission, by an independent public accountant;

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(3) such further information or documents regarding the registrant or its associate companies of the relations between them as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers."

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Section 5(c) of said Act provides that the Commission may permit a registrant to file a preliminary registration statement without complying with the provisions of Section 5(b), but that every registrant shall file a complete registration statement with the said Commission within such reasonable period of time as the Commission shall fix, but not later than one year after the date of registration.

45. In order to comply with the above described provisions of Section 5 of said Holding Company

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Act, it would be necessary for each of the defendants to expend very substantial sums of money to comply with the provisions of the Act with respect to registration. In order to accomplish complete registration in compliance with the foregoing statutory requirements, the defendant Bond and Share itself would be required to expend not less than $50,000; the defendant American Gas and its subsidiary companies, the operating company defendants Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company and Atlantic City Electric Company, would be required to expend in the aggregate not less than $60,000; the defendant American Company and its subsidiary companies, the operating company defendants The Montana Power Company, Nebraska Power Company, Pacific Power & Light Company and The Washington Water Power Company, would be required to expend in the aggregate not less than $85,000; the defendant Electric Company and its subsidiary companies, the holding company defendants Power Securities Corporation and United Gas Corporation and the operating company defendants Idaho Power Company, Utah Power & Light Company, United Gas Public Service Company and Houston Gulf Gas Company, would be required to expend in the aggregate not less than $60,000; the defendant National Company and its subsidiary companies, the holding company defendants Lehigh Company and Easton Consolidated Electric Company and the operating company defendant Pennsylvania Power & Light Company

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502 would be required to expend in the aggreate not less than $70,000.

46. By the terms and provisions of said Holding Company Act, each of the defendants, or any other holding company as therein defined, upon registration loses the status of a non-registered holding company and subjects itself to the jurisdiction of plaintiff Securities and Exchange Commission. Said Act attempts to make registration not merely a means for getting information, but the
503 acceptance of a license under which each of the defendants, or any holding company, is permitted to do those things prohibited by Section 4(a) but necessary for the conduct of its ordinary business operations, only upon the terms and conditions prescribed by subsequent paragraphs of the Act, as hereinafter alleged, and generally at the will and discretion of said Commission and not as of right. The whole mechanism of the control of the operations of the defendants by plaintiff Securities and Exchange Commission is based, by the provi-
504 sions of said Act, upon registration thereunder.

Immediately upon said registration and in consequence thereof, it will be and become unlawful by the terms of said Holding Company Act for any of the defendants, *without the prior approval of plaintiff Securities and Exchange Commission, or in contravention of any rule, regulation or order from time to time by it deemed necessary or appropriate*: (1) to issue or sell any long term security (which is defined in *Sec. 2(a) (16)* to include any

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note, draft, stock, bond, debenture, receiver's or trustee's certificate or certificate of deposit for a security) of any such company (*Sec. 6(a)*); (2) to exercise any privilege or right to alter the priority, preference, voting power or other right of the holders of any outstanding security of such company (*Sec. 6(a)*); (3) to acquire, directly or indirectly, any securities or utility assets or any other interest in any business (*Sec. 9(a) (1)*); (4) to lend or extend its credit to or indemnify any company in the same holding company system (*Sec.* 506
12(b)); (5) to declare or pay any dividend on any security of such company or to acquire, retire or redeem any security of such company (*Sec. 12(c)*); (6) to sell any security which such company owns of any public utility company or any utility assets (*Sec. 12(d)*); (7) to solicit any proxy, power of attorney, consent or authorization regarding any security of such company or a subsidiary company thereof (*Sec. 12(e)*); (8) to negotiate, enter into or take any step in the performance of any transaction not otherwise unlawful under said Act with any company in the same holding 507
company system or with any affiliate of a company in such holding company system (*Sec. 12(f)*); or (9) to keep its accounts, correspondence, memoranda, papers, books and other records (*Sec. 15(a)* and *(e)*).

Said Holding Company Act further provides, in *Sec. 12(a)*, that it shall be unlawful for a registered holding company to borrow money from any subsidiary company or from any public utility company in the same holding company system and, in *Secs.*

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13(a) and *13(b)*, that, after April 1, 1936, it shall be unlawful for any registered holding company to take any step in the performance of any service, sales or construction contract with any associate company which is a public utility company or a mutual service company, or for any subsidiary company of a registered holding company to take any step in the performance of any such contract with an associate company, except in accordance with such terms and conditions and subject to such limitations and prohibitions as plaintiff Commission

509 shall prescribe.

Both in the matters hereinabove mentioned, and in the further provisions of the Act, particularly those of Sections 14 to 29, inclusive, under which plaintiff Commission is authorized to require registered holding companies to make various and sundry reports; to prescribe accounting systems; to make minute examinations of all correspondence, memoranda, papers, books and records of registered holding companies and their subsidiary companies and affiliates; to investigate the business and financial condition and practices of registered holding

510 companies and their subsidiary companies; to compel attendance of witnesses; to require the production of books, papers, correspondence, memoranda, contracts, agreements, or other records which said Commission deems relevant and material, and to bring suits to enforce compliance with the provisions of the Act applicable to such registered holding companies, the entire business of each of the defendants would be subjected by registration to

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complete and virtually unlimited control of plaintiff Securities and Exchange Commission, and the actual management and direction of the business and property of defendants would be transferred from the duly authorized and responsible representatives of the owners thereof, to wit, the officers and directors of such companies, to said plaintiff Commission.

The judicial review provided for orders of said Commission by Section 24(a) of said Act is inadequate and incomplete, and is limited to review upon the law, as by the terms of said section "The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive."

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47. Following such registration and in consequence thereof, it will be done and become the duty of plaintiff Securities and Exchange Commission by the terms of Section 11 of said Act, as soon as practicable after January 1, 1938, to cause each of the defendants to take such action as said Commission shall find necessary to limit the operations of the holding company system, of which each such defendant would be then a part, to a "single integrated public-utility system," subject to a finding by said Commission of the existence of certain arbitrarily defined conditions which are not available to defendants Bond and Share, Electric Company, National Company and American Company, since their respective operating utility companies described in paragraphs 32, 33, 34, 35 and 36 hereof do not in any case comprise a "single integrated public-utility system" as defined in Section 2(a)

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(29) (meaning thereby one whose utility assets are physically interconnected or capable of physical interconnection) but consist of many such systems. By the terms of said Section 11, said Commission will be required to cause the disintegration, dismemberment or reorganization of each such defendant's so-called holding company system, so as to confine each such defendant's holdings to a single integrated public utility system, as provided in said Section 11.

Said Section 11 further provides,

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> "That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—
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> (A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

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> (B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and
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> (C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of

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localized management, efficient operation, or the effectiveness of regulation."

Of the subsidiary operating public utility companies of defendant American Gas, defendants Appalachian Electric Power Company and The Ohio Power Company, together with defendant American Gas' direct subsidiary companies, Indiana & Michigan Electric Company, Indiana General Service Company, Wheeling Electric Company, Southern Ohio Public Service Company and Kanawha Valley Power Company may constitute "a single integrated public-utility system" within the meaning of said Section 11 under the definition in Section 2(a) (29) of said Act of an "Integrated public-utility system" as:

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"* * * a system consisting of one or more units of generating plants and/or transmission lines and/or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation."

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The utility properties of defendants The Scranton Electric Company and Atlantic City Electric Company are not as to each other, nor as to the system above described, a single "Integrated public-utility system" within the definition in Section 2 (a) (29), but are "additional integrated public-utility systems" within the meaning of Section 11.

As a result of the foregoing, defendant American Gas' right to retain its stock ownership of any of the above companies as part of its holding company system is dependent upon plaintiff Commission's

521 findings under Section 11, which findings are factually conclusive, and subject to no judicial review, if supported by substantial evidence.

The defendant American Gas and its subsidiary companies have no present means of knowing whether and the extent to which plaintiff Commission may leave the defendant American Gas in possession, ownership or control of any of said public utility systems, as hereinabove described and particularly the systems of The Scranton Electric Company and Atlantic City Electric Company. Such

522 uncertainty will exist until at least January 1, 1938 and thereafter until said Commission, after a hearing, may enter its order thereon.

The respective properties of the subsidiary public utility companies of the holding company defendants United Company, Power Securities Corporation, Lehigh Company and Easton Consolidated Electric Company and of each of the operating company defendants themselves may constitute physically interconnected properties all as herein-

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before in paragraphs 32, 33, 34, 35 and 36 hereof alleged, within the meaning of Section 11 which submits to the jurisdiction of plaintiff Commission the conclusive determination of the factual questions embodied in the definition in Section 2(a) (29) of said Act. Such defendants have no present means of knowing whether and the extent to which said Commission will find that the respective properties operated by them and their subsidiary companies constitute integrated public utility systems. Such uncertainty will exist until at least January 1, 1938, and thereafter until said Commission, after a hearing, may enter its order thereon.

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Section 11 of the Act further imposes upon plaintiff Commission the duty of taking such steps as it shall find necessary to insure that the corporate structure or continued existence of any company in the holding company system of each or any of the defendants or any of its subsidiary companies does not, in the opinion of said Commission, unduly or unnecessarily complicate the corporate structure, or unfairly or inequitably distribute the voting power among security holders, of such holding company system.

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The provisions of said Section 11 constitute the primary and basic objective of said Holding Company Act. Section 1 (c) thereof provides—

> "* * * it is hereby declared to be the policy of this title, in accordance with which policy all the provisions of this title shall be interpreted, to meet the problems and eliminate the

526 evils as enumerated in this section, connected with public-utility holding companies which are engaged in interstate commerce or in activities which directly affect or burden interstate commerce; and for the purpose of effectuating such policy to compel the simplification of public-utility holding-company systems and the elimination therefrom of properties detrimental to the proper functioning of such systems, and to provide as soon as practicable for the elimination of public-utility holding companies
527 except as otherwise expressly provided in this title."

The enforcement of said Section 11 and the effectuation of the policy set forth in Section 1(c), as above quoted, will cause, arbitrarily by legislative fiat, and without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, the forced sale, or other form of disposal, and the consequent sacrifice of the values of defendant Bond and Share's assets and of the
528 respective assets of each of the holding company defendants Electric Company, National Company and American Company and of said defendants' respective investments in the stock of the holding companies and public utility operating companies owned by them as hereinbefore described. All of the various provisions of said Act hereinabove set forth are framed with a view to the effectuation of the policy set forth in said Section 1(c), to be accomplished through the mandatory provisions of said Section 11. Said sections, and the threat-

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ened enforcement thereof by the plaintiff Commission and by the cross-defendants, as hereinafter alleged, constitute an immediate and present irreparable damage and injury, and subject defendant Bond and Share and the holding company defendants Electric Company, National Company and American Company to a present threat of dismemberment, dissolution or reorganization, presently destroy their value as living going concerns, destroy their credit and the values of their securities and holdings, prevent their development through the making of such further investments in the securities of their subsidiary companies as are necessary to conserve and develop their business, threaten their organizations with disruption and destruction, and, if enforced, leave them with no alternative but to dissolve, go out of business, and sacrifice their investments for anything that they may bring.

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Similarly, said sections of the Act and the threatened enforcement thereof by the plaintiff Commission and by the cross-defendants, as hereinafter alleged, also constitute an immediate, present and irreparable damage and injury, and subject the holding company defendants American Gas, United Company, Power Securities Corporation, Lehigh Company and Eastern Consolidated Electric Company and each of the operating company defendants to a present threat of possible dismemberment, dissolution or reorganization; tend to depreciate or destroy their values as living going concerns; tend to depreciate or destroy their credit and the values of their securities and holdings; tend to alter or

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532 prevent their development through the making of such further investments in the securities of their subsidiary companies as are necessary to conserve and develop their business; threaten their organizations with disruption or destruction, and, if enforced by declaring the holding company system of any of said defendants not to be a "single integrated public-utility system", leave each such defendant with no alternative but to reorganize its properties and business on such basis as said Commission may permit and to sacrifice the investments which it may 533 be required to dispose of for anything that they may bring.

48. Said Holding Company Act is not in truth and in fact a law, but said pretended statute is void and unconstitutional and of no force and effect for the following among other reasons, to-wit:

(1) None of the provisions of said Holding Company Act, in its application to the defendants constitutes regulation of either interstate or foreign commerce within Section 8 of Article 534 I of the Constitution of the United States, which grants to Congress the power to regulate commerce with foreign nations and among the several states, and the meaning, purpose and effect of all of the provisions of said Holding Company Act hereinbefore specifically recited is to prohibit or regulate the performance of acts which, in so far as they may be performed by the defendants, do not constitute commerce with foreign nations or among the several

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states, or directly affect such commerce. In so far as any of the companies sought to be regulated by said Act, and specifically any defendant, may be held to be in any respect engaged in interstate commerce, or in so far as any of the matters or things sought to be regulated by said Act may be held to constitute regulations of interstate commerce, as applied to any company, and particularly any defendant herein, said Act is void, and in excess of the powers of the Congress, in that it attempts to regulate, without distinction and by inseparable provisions, both companies engaged in interstate commerce, and companies not engaged in interstate comerce, and acts of interstate commerce and acts not of interstate commerce.

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(2) Said Act, by its language, purpose and effect, attempts to regulate matters not within any of the powers conferred upon the Congress by the Constitution of the United States, and said Act, and all the provisions thereof, particularly those hereinbefore recited in paragraphs 43, 46 and 47 hereof, are in violation of the Tenth Amendment to the Constitution of the United States.

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(3) Said Act is an unlawful delegation of legislative powers to plaintiff Commission, and violates Section 1 of Article I of the Constitution of the United States by which legislative powers are granted to the Congress, in that no adequate standards are provided in the Act

538 by which the action of the Commission is to be guided or controlled; by the terms of said Act, it is provided that the action of said Commission shall be such as in its uncontrolled discretion it may find necessary or appropriate "in the public interest or for the protection of investors or consumers" or "to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder".

539 (4) The provisions of said Act which deny to non-complying companies right to use the mails or facilities of commerce in ordinary business transactions are in excess of the powers of Congress granted by Section 8 of Article I of the Constitution of the United States either to regulate commerce or to establish post offices and post roads, and constitute a deprivation of property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

540 (5) The provisions of the Act hereinbefore referred to, particularly those enumerated and referred to, in paragraphs 43, 44, 46 and 47 (and the enforcement thereof as set forth in paragraphs 50 and 51) hereof, which purport to, and if enforced will, take from defendants the right and power to acquire, maintain, administer and dispose of their property, and to exercise ordinary proprietary rights with respect thereto, and vest in plaintiff Commission control of such property, its acquisition and

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disposition, including even the capital and corporate reorganization of defendant Bond and Share and all the other defendants and the redistribution of voting power among the security holders of their respective subsidiary companies, deprive such defendants of their property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States and also deprive such defendants of rights, powers, privileges and immunities conferred upon them under and 542
pursuant to the laws of the states in which they were respectively organized and constitute an encroachment upon the reserved powers of said states, in violation of the Tenth Amendment to the Constitution of the United States.

(6) The provisions of Section 4(a) (2) and (6) of said Act which prohibit defendants Bond and Share and American Gas, as unregistered holding companies, by use of the mails or any means or instrumentality of inter- 543
state commerce, from taking any step in the performance of any service, sales or construction contract or from owning securities of any subsidiary company taking any such step and the provisions of Section 13(a) and (b) of said Act which prohibit said defendants after April 1, 1936, from taking directly any step in the performance of any such service, sales or construction contract or from taking any such step through a subsidiary company except

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at cost, and then only in accordance with terms, conditions and limitations prescribed by plaintiff Commission, destroy contract rights, presently threaten to disrupt and destroy the valuable service organizations now maintained by said defendant American Gas and by defendant Bond and Share's wholly-owned subsidiary company, Ebasco Services Incorporated, and will deprive said defendants of their property without due process of law in violation of the Fifth Amendment to the Constitution of the
545 United States.

(7) In limiting review of the orders and rules of plaintiff Commission by providing that upon such review the findings of said Commission as to the facts, if supported by substantial evidence, shall be conclusive, the Act deprives defendants of their rights to a judicial determination of all questions of fact affecting their constitutional rights, or affecting the jurisdiction of said Commission to exercise the
546 powers attempted to be delegated to it, and deprives defendants of their property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(8) The provisions of Section 29 of said Act, quoted in paragraph 43 hereof, impose penalties for violation of said Act upon officers and employees of defendants, and upon defendants themselves, so excessive as to coerce

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compliance by defendants with the unlawful provisions of said Act, and the rules, regulations and orders of plaintiff Commission which may be made thereunder, and thus deny defendants their day in court, deprive defendants of their property without due process of law in violation of the Fifth Amendment to the Constitution of the United States and will impose excessive fines and inflict cruel and unusual punishments upon defendants in violation of the Eighth Amendment to the Contitution of the United States.

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(9) The disabilities and prohibitions imposed on non-registered holding companies by Section 4, and the requirement of registration imposed by Section 5 of the Act, with the ensuing consequences of such registration imposed by subsequent sections hereinbefore enumerated, are referable to no Federal standard or constitutional power of the Federal government, but are arbitrary, unreasonable, and discriminatory, in that they impose, upon an arbitrarily selected group of companies in a class, disabilities, prohibitions, duties and limitations to which other companies in the same class are not subject, but from which they are exempt. Such arbitrary classification constitutes a deprivation of the liberty and property of the companies subjected thereto without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

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(10) By the act of registration of holding companies attempted to be imposed by Sections 4 and 5 of said Act, jurisdiction is sought to be conferred upon and acquired by the plaintiff Commission to control, regulate and manage not only the registering holding company, but also each and every of its subsidiary utility and non-utility companies, as defined in said Act, irrespective of whether or not said holding company or said subsidiary companies may do any business in interstate commerce, or may
551 otherwise be subject to Federal control and regulation. Said Act, therefore, seeks to establish Federal control of matters, persons, corporations and things in excess of the power of the Federal government under the commerce clause or any other clause of the Constitution of the United States, invades the reserved rights of the states and is in violation of the Tenth Amendment to said Constitution.

49. Being advised by counsel and believing that
552 said Holding Company Act is wholly unconstitutional and void, and of no effect, and that registration thereunder would prejudice defendants' rights to attack the validity and constitutionality of the Holding Company Act and to full and adequate judicial relief, and adequate protection against the attempted unlawful interference by plaintiff Commission and by the Commissioners with defendants' property and business, and the imposition or attempted imposition of the penalties prescribed by the Act for refusal to conform thereto, and would

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involve defendants in a multiplicity of suits, defendants are constrained in protecting their constitutional rights to refrain and have refrained from registration, and do not propose, nor intend, voluntarily to register under said Act, as provided by Section 5 thereof, nor otherwise voluntarily to turn over the management of their properties or business from their boards of directors to the asserted jurisdiction of said Commission involved in such registration.

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50. Defendants are informed and believe and therefore allege that plaintiff Securities and Exchange Commission, and the cross-defendants, Commissioners, Attorney General and Postmaster General, asserting their intention to enforce the provisions of the Act, have released through the press statements to the effect (quoting from the release of the Attorney General) that:

> "In enforcing the Act it is proposed promptly to institute civil proceedings against one or more large and important companies who may 555 fail to register to enforce compliance with its provisions and to seek decisions from the Supreme Court sustaining the validity of the Act. In the meanwhile it is not proposed to institute criminal proceedings, and if later it should become necessary to institute criminal proceedings against any company, it is not the intention of this department to seek to exact penalties for earlier offenses which might unduly

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penalize the investors in the offending company."

and (quoting from the official Postal Bulletin dated December 5, 1935, signed by the Postmaster General):

"Whatever may be the authority, if any, of the Postmaster General to exclude from the mails matters sent in violation of the act, the Postmaster General does not intend to ex-
557 clude any company from using the mails, at least not before the validity of the act is judicially determined by the Supreme Court. You will accordingly take no steps to exclude unregistered holding companies from the use of the mails."

Such statements of the Attorney General and the Postmaster General, while accepted by the defendants, do not estop said officials, or their successors in office, from instituting such proceedings, and express merely their present intention, which they
558 may withdraw at any time. The Act imposes upon plaintiff Securities and Exchange Commission and the Commissioners and upon the Attorney General and the Postmaster General (and through them upon United States District Attorneys and Postmasters) the legal duty of enforcement, and the defendants are informed and believe and, therefore, allege on information and belief that the Attorney General himself does not presently or without further notice propose to commence or institute

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any civil or criminal proceedings to enforce such Holding Company Act, but has reserved the right in his sole discretion as to time and manner to proceed with such enforcement of such Act, and that the Postmaster General does not presently or without further notice propose to exclude any unregistered holding company from using the mails or to exclude from the mails matter sent in violation of said Holding Company Act, but has reserved the right in his sole discretion as to time and manner to proceed with such enforcement of such Act.

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But whether or not enforced by the imposition of either criminal or civil penalties, or one or a number of suits to collect fines and penalties, the existence of the provisions of such Act on the statute books, as hereinbefore alleged, constitutes an immediate, present and irreparable threat, damage and injury to defendants' property, and causes an immediate impairment of the value of said property and of defendants' businesses and casts a cloud on defendants' title to such property, and questions the validity of substantially every act and contract of defendants until the invalidity of such Act shall be judicially declared, all as more fully hereinbefore alleged.

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Defendants are further informed and believe, and therefore allege, that, subject to the foregoing statements of immediate intention, and in their sole discretion as to time and manner, the plaintiff Securities and Exchange Commission, the Commissioners, the Attorney General and the Postmaster General, under color of the pretended authority of said Hold-

562 ing Company Act contending that such Act validly confers authority upon them, are combining and conspiring together and with each other to injure, and are threatening to injure, defendants, and will, unless restrained by this Court of Equity, proceed so to do in the following manner:

(a) The plaintiff Securities and Exchange Comsion intends, and is threatening, to issue rules, regulations and orders applicable to defendants providing for the form and the contents of regis-
563 tration statements to be filed with said Securities and Exchange Commission, together with a vast number of schedules, appendices and other documents to be attached thereto, all as provided in Section 5 (b) of said Holding Company Act and more particularly described in paragraph 44 hereof; said plaintiff Commission further intends and threatens, if defendants file with said Commission notifications of registration, to prevent, control and regulate, subject to its arbitrary discretion, each and every act of defendants and their subsidiary companies falling within the classifications and
564 descriptions of various acts prohibited or subjected to regulation or control by said Commission under the provisions of said Holding Company Act, which said acts are more specifically set forth in paragraphs 46 and 47 hereof; said plaintiff Commission and the Commissioners further intend and threaten, if defendants shall not file such notifications of registration, to enforce the provisions of said Holding Company Act, under the purported authority of Section 18 (f) thereof, by transmitting to the

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Attorney General evidence of failure to register and of acts declared unlawful by Section 4 (a) of said Act, which acts are more specifically set forth in paragraph 43 hereof; (b) subject to the allegations set forth in this paragraph 50 hereof, the Attorney General intends and threatens to institute, upon receiving such reports and information from the plaintiff Commission and the Commissioners, a large number of criminal proceedings to collect the fines and impose the punishments provided for by said Act, which proceedings and the cumulative, onerous and excessive penalties authorized 566 by the provisions of said Act will have the effect of coercing defendants to register under said Act and to accept the rules, regulations and orders of the plaintiff Securities and Exchange Commission and thus permit said plaintiff to regulate every detail of defendants' businesses in accordance with the arbitrary and uncontrolled discretion of said plaintiff Commission; and (c) subject to the allegations set forth in this paragraph 50 hereof, the Postmaster General intends and threatens to enforce the provisions of Section 4 (a) of said Act 567 by preventing the defendants from using the mails to conduct the acts necessarily incidental to their businesses specifically set forth in paragraph 43 hereof, which acts are done in the lawful and necessary conduct of their business, thus altogether preventing them from carrying on their business, or any part thereof. Each and all of the foregoing threatened acts of said plaintiff Commission and of the Commissioners, the Attorney General and

568 the Postmaster General, will result in immediate and irreparable injury, loss and damage to defendants as is hereinafter in the paragraph immediately following more specifically alleged.

51. The right of each defendant to manage its property and to conduct its business free from all interference and restraint by the plaintiff Securities and Exchange Commission and by the Commissioners and, subject to the allegations set forth in paragraph 50 hereof, by the Attorney General
569 and the Postmaster General acting under color of said Holding Company Act, is a property right of great value which will be destroyed by said plaintiff Commission and by the Commissioners and, subject to the allegations set forth in paragraph 50 hereof, by said Attorney General and said Postmaster General to the irreparable injury of each such defendant, unless they are restrained from enforcing the provisions of said Act against any of the defendants. The property right of each such defendant to enjoy and conduct its business free from any unlawful interference will be invaded and destroyed
570 whether or not any such defendant shall register under said Holding Company Act, in the following manner:

(a) Even though this Court does not direct the defendants to register under said Act, the provisions of Section 4(a), and the threatened enforcement thereof by plaintiff Securities and Exchange Commission and by the Commissioners and, subject to the allegations set forth in

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paragraph 50 hereof, by the Attorney General and Postmaster General, will immediately impair, and threaten wholly to destroy, the value of the investment of the defendants in the securities of the companies described in paragraphs 32 to 36 hereof. As unregistered holding companies, the continued ownership by defendants on and after December 1, 1935, of said securities is made unlawful and it is also made unlawful for defendants to dispose of said securities by use of the mails or by any 572
means or instrumentality of interstate commerce or to sell said securities in any manner having reason to believe that such securities will be resold by use of the mails or any means or instrumentality of interstate commerce, by reason whereof, and of the threatened acts of plaintiff Securities and Exchange Commission and of the Commissioners and, subject to the allegations set forth in paragraph 50 hereof, of the Attorney General and Postmaster General, defendants will be wholly deprived of the benefits of ownership of said securities and 573
their value to defendants will be wholly destroyed and defendants will be likewise deprived of any practicable market in which they may dispose of said securities and realize anything thereon and the property of defendants will thus be confiscated;

(b) Even though this Court does not direct the defendants to register under said Act, they

574 will be harassed by plaintiff Securities and Exchange Commission and by the Commissioners, and, subject to the allegations set forth in paragraph 50 hereof, by the Attorney General and Postmaster General and subjected to a great number of civil and criminal suits and the danger of excessive and onerous penalties amounting to $200,000 for each and every offense by reason of the acts set forth in paragraph 43 hereof which it will be necessary for defendants to do in the ordinary and daily
575 conduct of their business and which are by said Act declared to be unlawful. Against such numerous suits and prosecutions, and against the threat of the excessive penalties to be imposed thereby, defendants have no adequate remedy at law;

(c) If defendants are forced by the threats hereinabove set forth or directed by order of this Court to file a notification of registration and, subsequently, the other documents and information required under the provisions of
576 Section 5 of said Act, they will be forced to expend in the aggregate a large sum of money, to wit, not less than $325,000 in order to prepare and compile all the information, schedules, appendices, and documents required to be contained in or filed with their complete registration statements and which sum so expended will be wasted and dissipated;

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(d) If defendants are forced by the threats hereinabove set forth or directed by order of this Court to register under said Act, they will immediately be forced to institute or defend a large number of proceedings to review or to resist the enforcement of orders and regulations of said Commission, which said Commission is required to make in accordance with the provisions of said Act more particularly alleged in paragraph 46, all of which provisions, as hereinabove alleged, are in violation of the Constitution of the United States;

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(e) If defendants are forced by the threats hereinabove set forth or directed by order of this Court to register under said Act, the values of the property and business of defendants and of the tangible and intangible property required and used therein, and of the private funds invested and risked therein will immediately be impaired, and may eventually be destroyed, by reason of the unlawful interference by plaintiff Securities and Exchange Commission and by the Commissioners with the control and direction of defendants' property and business;

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(f) If defendant Bond and Share is forced by the threats hereinabove set forth, or directed by order of this Court, to register under said Act, the provisions of Section 11 of said Act will require the reorganization of said defendant in such a manner that its ownership or

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control will be confined to a single integrated public utility system (with such additional integrated public utility systems as the plaintiff Commission may permit in accordance with the provisions of Section 11), all at the will of the Commission, at any time subsequent to January 1, 1938, which provisions and the required acts of the plaintiff Securities and Exchange Commission thereunder immediately tend to destroy the value of defendant Bond and Share's said investment in the other de-

581 fendants, make the financing of said companies and their subsidiary companies and the conduct of their public utility business impossible and result in the present destruction of the value of defendant Bond and Share's property and investment.

(g) If defendants American Company, Electric Company and National Company are forced by the threats hereinabove set forth, or directed by order of this Court, to register under said Act, the provisions of Section 11

582 of said Act will require the reorganization of said defendants and their subsidiary companies mentioned in paragraphs 32, 33, 34 and 35 hereof in such a manner that the respective subsidiary companies of each of said defendants will constitute but a single integrated public utility system as defined in said Act, and will confine the ownership or control of each of said defendants to a single one of such

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systems (with such additional integrated public utility systems as the plaintiff Commission may permit in accordance with the provisions of Section 11), all at the will of the Commission, at any time subsequent to January 1, 1938, which provisions and the required acts of the plaintiff Securities and Exchange Commision thereunder destroy the value of said defendants' investment in said subsidiary companies, make the financing of said subsidiary companies and the conduct of their public utility business impossible and result in the present destruction of the value of said defendants' respective property and investments.

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(h) If the remaining holding company defendants, American Gas, United Gas Corporation, Power Securities Corporation, Lehigh Power Securities Corporation and Easton Consolidated Electric Company and the operating company defendants are forced by the threats hereinabove set forth, or directed by order of this Court, to register under said Act and the holding company system of any of said defendants is found not to constitute a single integrated public utility system, the provisions of Section 11 of said Act will require the reorganization of such defendant in such manner as to confine the ownership or control of such defendant to a single integrated public utility system (with such additional integrated public utility systems as the plaintiff Commission may

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permit in accordance with the provisions of Section 11), all at the will of the Commission, at any time subsequent to January 1, 1938, which provisions and the required acts of the plaintiff Securities and Exchange Commission thereunder immediately threaten and tend to destroy such defendant's investment in its electric or gas utility properties and tend to injure and prevent the financing of such defendant and its subsidiary companies and the conduct of their public utility business and result in
587 the present depreciation and possible future destruction of the value of such defendant's property and investment; and

(i) Whether defendants shall or shall not register under said Act, the provisions of Sections 4, 11 and 13 of said Act, and the threatened enforcement thereof by the plaintiff Securities and Exchange Commission and by the Commissioners, and, subject to the allegations in paragraph 50 hereof, by the Attorney Gen-
588 eral and Postmaster General, and the onerous and excessive penalties provided for the violation thereof, will immediately impair and will progressively tend to destroy the management of defendants, and the technical and service organizations of defendant American Gas and of Ebasco Services Incorporated, which are composed of experienced and skilled persons especially trained in the duties which they

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perform, and upon the continued and efficient services of whom the successful operation of defendants and their subsidiary companies depends. There is every reasonable probability that such persons will not and cannot continue in their present duties, or in the efficient performance thereof, because of the mandatory dismemberment of defendants' systems in the near future, and the present threat of criminal penalties for the doing of acts which the continued performance of their duties requires.

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The controversy arising upon the facts hereinbefore alleged immediately and irreparably affects the right of the defendants to conduct, manage, conserve and control the disposition of their property, and the prompt determination and declaration of defendants' legal rights is immediately necessary. In order to effectually preserve and protect defendants' property rights, further relief as prayed is both necessary and proper.

By reason of all the foregoing, including the continued existence of said Act and the proceedings threatened to be taken by the plaintiff Securities and Exchange Commission and by the Commissioners and, subject to the allegations in paragraph 50, by the Attorney General and Postmaster General thereunder, the defendants are suffering and will continue to suffer great and irreparable injury to their property, and such injury will constitute an immediate and irreparable loss for which they have, and can have, no adequate remedy at law.

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Answer of Defendants and Intervening Defendants to the Amended and Supplemental Bill of Complaint

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WHEREFORE, the premises considered, the defendants pray:

(1) That on the amended and supplemental bill of complaint and the answer herein, the amended and supplemental bill of complaint be dismissed.

(2) That on the separate defense, counterclaim and cross-bill herein:

593 (a) This Court enter a declaratory judgment under Section 274(d) of the Judicial Code, as amended by the Act of June 14, 1934 (Chapter 512, 48 Stat., 955, U. S. C. A., Title 28, Section 400), that said Holding Company Act, and each and every provision thereof, is unconstitutional, void and of no effect.

(b) This Court grant defendants after notice and hearing a temporary injunction against plaintiff Securities and Exchange Commission, enjoining said Commission, its agents and all persons acting
594 in aid of said Commission, from making any rule, regulation or order applicable to defendants under said Holding Company Act and, specifically, any rule, regulation or order under the provisions referred to in paragraphs 46 and 47 hereof.

(c) This Court grant defendants, after notice and hearing, a temporary injunction against plaintiff Commission and the Commissioners, enjoining said Commission and Commissioners, and their succes-

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sors in office, their agents and all persons acting in aid of them from instituting or taking any steps toward the institution of any action, proceeding or prosecution designed to compel defendants or the directors, officers or employees thereof, to comply with said Act, or to compel the defendants to register under said Holding Company Act, or to enforce against defendants, or the directors, officers or employees thereof, any penalty or other liability imposed by said Act, or authorized thereunder, on account of acts done or omitted by defendants or the directors, officers or employees thereof; and enjoining the plaintiff Commission and the Commissioners, and their successors in office and all persons acting in aid of it or them, from transmitting to the Attorney General, or his successors in office, any evidence of violation of said Act by the defendants or the directors, officers or employees thereof, or in any manner from inducing said Attorney General to institute proceedings against them, or any of them.

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(d) This Court grant defendants, after notice and hearing, a temporary injunction against said Attorney General, and his successors in office, and all persons acting in aid of him or his successors in office or under his superintendence or direction or the superintendence or direction of his successors in office, enjoining him and them from instituting or directing the institution of any proceeding against the defendants, or any of them, or their directors, officers or employees, on account of any

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598 act done or omittted to be done under said Act and that this Court grant defendants, after notice and hearing, a temporary injunction against the Postmaster General and his successors in office and those acting or claiming to act under his direction or authority or under the direction or authority of his successors in office, enjoining him and them from enforcing the postal provisions of said Act by excluding from the mails any property, communication or securities of the defendants, or any of them, or otherwise, under or by virtue of the terms or
599 provisions or under the authority of said Holding Company Act.

(e) On final hearing this Court enter a permanent injunction to the same effect.

(f) For such other and further relief as to the Court may seem meet.

SIMPSON THACHER & BARTLETT,
120 Broadway,
New York, N. Y.
600 *Solicitors for all Defendants and Intervening Defendants.*

THOMAS D. THACHER,
JOHN F. MACLANE,
DOUGLAS A. CALKINS,
Of Counsel for all Defendants and Intervening Defendants.

Answer of Defendants and Intervening Defendants to the Amended and Supplemental Bill of Complaint

601

REID & MURPHY,
A. J. G. PRIEST,
2 Rector Street,
New York, N. Y.
Of counsel for Defendants Electric Bond and Share Company, American Power & Light Company, National Power & Light Company and Electric Power & Light Corporation.

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M. F. MILLIKAN,
30 Church Street,
New York, N. Y.
Of Counsel for Defendants American Gas and Electric Company, Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company and Atlantic City Electric Company.

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(Here follow Exhibits Nos. I to V, both inclusive, which describe generally the properties of, and business done by, subsidiaries of American Power & Light Company, Electric Power & Light Corporation, United Gas Corporation, National Power & Light Company and American Gas & Electric Company, and Exhibit VI, a statement of capitalization of the holding company defendants (other than Bond and Share) and of voting stock ownership of Bond and Share in such defendants as of November 30, 1935.)

Stipulation as to Additional Parties

604 (TITLE OF COURT AND CAUSE.)

It appearing that the defendants and intervening defendants herein in their answer to the amended and supplemental bill of complaint propose to include in a separate defense a counterclaim and cross-bill, the issues presented by which may require the presence of parties other than those named in the said amended and supplemental bill, to wit, Homer S. Cummings, Attorney General of the United States, James A. Farley, Postmaster General of the United States, James M. Landis,
605 Robert E. Healy, George C. Mathews and James D. Ross, who are members of, and constitute the Securities and Exchange Commission (the plaintiff herein):

IT IS HEREBY STIPULATED, without prejudice to the right of the plaintiff or said individuals as defendants to said counterclaim and cross-bill to assert as a defense thereto any matter of law or fact appearing upon the face thereof, or otherwise, except absence of necessary parties defendant to said counterclaim and cross-bill, improper venue, or lack of
606 service of process; that an order may be entered herein bringing in said above named individuals as cross-defendants to said counterclaim and cross-bill, and that the undersigned, solicitors for the plaintiff, without the service of subpoenas or other process, will appear on behalf of the said above named individual members of the Securities and Exchange Commission and Homer S. Cummings, Attorney General of the United States will appear

on his own behalf and on behalf of James A. Farley, Postmaster General of the United States, and will 607
answer said counterclaim and cross-bill on their behalf, and that this stipulation shall constitute such appearances on behalf of all of said cross-defendants. It is agreed that in no event shall any personal judgment, decree or order for costs be entered against the above named individuals, and defendants expressly waive any right that they may have, or may obtain by virtue of any order or decree subsequently entered herein to tax costs against said individuals.

IT IS FURTHER STIPULATED THAT Central Arizona 608
Light and Power Company, Montana Power Gas Company, Indiana & Michigan Electric Company, Spokane Central Heating Company, and Spokane United Railways may be allowed to intervene as additional defendants, and to adopt as their own the pleadings of the defendants herein, and set forth such additional allegations as may be necessary in their bill of intervention which shall be taken as part of their pleading, and such additional allegations shall be deemed to be denied by the plaintiff and the cross-defendants without further 609
pleadings on their part.

The annexed ORDER may be entered without notice.

Dated January 21, 1936.

JOHN J. BURNS,
by R. H. J.

ROBERT H. JACKSON,
610 Solicitors for Plaintiff, The Securities and Exchange Commission.

SIMPSON THACHER & BARTLETT,
THOMAS D. THACHER,
JOHN F. MACLANE,
Solicitors for Defendants.

HOMER S. CUMMINGS,
by R. H. J.
Solicitor for Cross-Defendants Homer S. Cummings, Attorney General of
611 the United States and James A. Farley, Postmaster General of the United States.

JOHN J. BURNS,
by R. H. J.

ROBERT H. JACKSON,
Solicitors for Cross-Defendants, James M. Landis, Robert E. Healy, George C. Mathews and James D. Ross, members of, and constituting the Securities and Exchange Com-
612 mission.

Order

(Title of Court and Cause.) 613

Upon the annexed stipulation it is hereby

Ordered that Homer S. Cummings, individually and as Attorney General of the United States; James A. Farley, individually and as Postmaster General of the United States; James M. Landis, Robert E. Healy, George C. Mathews and James D. Ross, individually and as members of the Securities and Exchange Commission, shall be brought into and made parties to this suit as cross-defendants to the counterclaim and cross-bill of the defendants; 614 and it is

Further ordered that Central Arizona Light and Power Company; Montana Power Gas Company, Indiana & Michigan Electric Company; Spokane Central Heating Company and Spokane United Railways, be and they are hereby permitted to intervene as additional defendants in this suit, and adopt as their own the pleadings of the defendants herein, with leave to set forth such additional allegations as may be necessary in their bill of intervention, which shall be taken as part of their 615 pleadings; and it is

Further ordered that such additional allegations shall be deemed to have been denied by the plaintiff and the cross-defendants without further pleading on their part.

Dated: January 22, 1936.

Julian W. Mack,
U. S. C. J.

Bill of Intervention

616 (TITLE OF COURT AND CAUSE.)

To the Honorable Judges of the United States District Court for the Southern District of New York:

The bill of intervention of Central Arizona Light and Power Company, Indiana & Michigan Electric Company, Montana Power Gas Company, Spokane Central Heating Company and Spokane United Railways respectfully shows to this Court and alleges:

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1. Central Arizona Light and Power Company is a corporation duly organized and existing under and by virtue of the laws of the State of Arizona and is a resident and citizen of the State of Arizona, with its principal office and corporate domicile in the City of Phoenix in said State.

Indiana & Michigan Electric Company is a corporation duly organized and existing under and by virtue of the laws of the State of Indiana and is a resident and citizen of the State of Indiana, with its principal office and corporate domicile in the

618 City of South Bend in said State.

Montana Power Gas Company is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, and is a resident and citizen of the State of New Jersey, with its corporate domicile in the City of Jersey City in said State, but with its principal office and place of business in the City of Butte, in the State of Montana.

Spokane Central Heating Company is a corporation duly organized and existing under and by 619
virtue of the laws of the State of Washington and is a resident and citizen of the State of Washington, with its principal office and corporate domicile in the City of Spokane in said State.

Spokane United Railways is a corporation duly organized and existing under and by virtue of the laws of the State of Washington and is a resident and citizen of the State of Washington, with its principal office and corporate domicile in the City of Spokane in said State.

2. On or about January 22, 1936 an order was 620
duly made and entered by this Court granting leave to Central Arizona Light and Power Company, Indiana & Michigan Electric Company, Montana Power Gas Company, Spokane Central Heating Company and Spokane United Railways, hereinafter sometimes referred to collectively as the "subsidiary company defendants", to intervene as additional defendants in the above entitled action, to adopt as their own the pleadings of the other defendants, and to file this bill of intervention which is in answer to the Amended and Supple- 621
mental Bill of Complaint of the plaintiff, and by way of counterclaim and cross-bill against the plaintiff and cross-defendants named in the defendants' counterclaim and cross-bill filed herein.

3. Section 2 (a) of the Holding Company Act (hereinafter called the "Act") defines the following, among other, terms: Electric utility company, Gas utility company, Public-utility company, Holding company, Subsidiary company, Holding-com-

pany system, Registered holding company, Security
622 and Voting security. When such terms are hereinafter used, they are used in their statutory sense, as thus defined in said Section 2 (a) of said Act. When the term "Answer" is hereinafter used it refers to the answer of the original defendants and the inter ening defendants, including the separate defense, counterclaim and cross-bill, filed herein.

4. Central Arizona Light and Power Company and Montana Power Gas Company are subsidiary companies of American Power & Light Company. Indiana & Michigan Electric Company is a sub-
623 sidiary company of American Gas and Electric Company. Spokane Central Heating Company and Spokane United Railways are subsidiary companies of The Washington Water Power Company and thereby of American Power & Light Company. The ownership of the voting stock of the above named subsidiary companies by the above named holding companies is set forth in Paragraphs 32 and 36 of, and in paragraph (q) of Exhibit I to, the Answer. By reason of being subsidiary companies of the above holding companies, said subsidiary company defendants are, by definition of Section 2
624 (a) of the Act, subsidiary companies of Electric Bond and Share Company.

5. None of the subsidiary company defendants is a "Holding company" as defined in Section 2(a) of the Act.

6. Central Arizona Light and Power Company is an electric utility company and a gas utility company. Indiana & Michigan Electric Company is

an electric utility company. Montana Power Gas Company, Spokane Central Heating Company and Spokane United Railways are not public utility companies as defined in said Act. 625

7. Central Arizona Light and Power Company has for many years conducted and still conducts an electric utility business and a gas utility business solely within the State of Arizona. Said business and the location of the utility assets used in said business are more fully described in paragraph (a) of Exhibit I to the Answer.

8. Indiana & Michigan Electric Company has for many years conducted and still conducts an electric utility business in the State of Indiana and Michigan. The Company owns certain transmission lines which cross the Indiana-Michigan boundary. Substantial amounts of electric energy are transmitted by the Company across such state boundary and are ultimately sold to retail customers of the Company or at wholesale. The Company also has certain transmission lines extending to the Indiana-Ohio boundary which are used for the purpose of exchanging electric energy with, and receiving electric energy from, an associate electric utility company having properties outside the State of Indiana. The business of said defendant and the location of its utility assets are more fully described in paragraph (c) of Exhibit V to the Answer. 626 627

9. Montana Power Gas Company has for many years conducted and still conducts a natural gas business, including an incidental business in by-products, solely within the State of Montana. The

Company also purchases substantial amounts of
628 natural gas from sources solely within the State of Montana. The business of said defendant and the location of its properties are more fully described in paragraph (f) of Exhibit I to the Answer.

10. Spokane Central Heating Company has for many years conducted and still conducts a central heating business in a portion of the business district of the City of Spokane in the State of Washington by means of a central steam heating plant and steam pipes and mains. All of the facilities of the Company used in the conduct of its business
629 are located solely within the State of Washington and steam heat is furnished solely to purchasers within said State. Said defendant is referred to in paragraph (q) of Exhibit I to the Answer.

11. Spokane United Railways has for many years conducted and still conducts an electric street railway and bus service in the City of Spokane in the State of Washington. All of the facilities of the Company used in the conduct of its business are located solely within the State of Washington and electric street railway service and bus service
630 are rendered solely within the State of Washington. All the electricity used in the operation of the street railway properties is purchased in said State of Washington. Said defendant is referred to in paragraph (q) of Exhibit I to the Answer.

12. Upon the foregoing, each of the subsidiary company defendants alleges that it is a company engaged solely in intrastate business within the state or states in which it operates, subject to the

jurisdiction of such state and the regulatory authorities thereof; that it is not engaged in, and its 631
activities do not affect, commerce with foreign nations or among the several states, and that it is not subject to regulation or supervision by the Federal government or any agency or instrumentality thereof, save as any of the operations of the defendant Indiana & Michigan Electric Company, as more fully described in paragraph (c) of Exhibit V to the Answer, may be held to constitute commerce between the states, which said operations are severable and distinct from the operations of said defendant within the States of Indiana and Michi- 632
gan and constitute a minor and incidental part of said defendant's operations.

13. Defendants Central Arizona Light and Power Company, Indiana & Michigan Electric Company and Spokane United Railways are subject to the regulations of, and are regulated by, the public service commissions of the states in which they respectively operate, under and in accordance with the terms of the several public utilities acts of said states, to wit, Central Arizona Light and Power Company by the Arizona Corporation Com- 633
mission, Indiana & Michigan Electric Company by the Indiana Public Service Commission and the Michigan Public Utilities Commission and Spokane United Railways by the Washington Department of Public Service. In so far as any of the business of defendant Indiana & Michigan Electric Company may not be fully subject to regulation by the commissions of Indiana and Michigan, and may be subject to any degree of Federal regulation, such business, as hereinbefore alleged, is a minor part of,

and severable and distinct from, its intrastate business.

In addition to the general power of regulation of rates and charges for, and conditions of, service and matters incidental thereto, each of the above named commissions has some of the following powers of regulation, among others, over the respective defendants subject to their jurisdiction (the states named after each power being those whose commissions have been specifically given such power): (1) investigation of management (Indiana); (2) inspection of books (Arizona, Indiana, Michigan, Washington); (3) regulation of accounts and statistics (Arizona, Indiana, Michigan, Washington); (4) regulation of depreciation or retirement account (Arizona, Indiana, Washington); (5) production of books and other information and filing of reports (Arizona, Indiana, Michigan, Washington); (6) supervision of issuance of securities (Arizona, Indiana, Michigan, Washington); (7) supervision of sale, lease, transfer, mortgage or merger of properties and franchises (Arizona, Indiana); (8) supervision of acquisition of securities or properties of another public utility (Arizona, Indiana, Washington); (9) supervision of payment of dividends (Washington); (10) supervision of budget expenditures (Washington); (11) supervision of contracts with affiliated interests for management, construction, engineering, accounting or similar services (Indiana, Washington).

Defendant Spokane Central Heating Company and defendant Montana Power Gas Company are not now subject to similar regulation by any state agency but are subject generally to the laws of the States of Washington and Montana, respectively.

14. By the provisions of the Act, each of the subsidiary company defendants as a subsidiary company of one or more of the holding company defendants would be and become fully subject to the jurisdiction of the Securities and Exchange Commission, its orders, rules and regulations if this Court should order said holding company defendants to register under Section 5 of said Act. The subsidiary company defendants are advised by counsel and believe that these provisions of the Act as applied to them are wholly unconstitutional, void and of no effect for the reasons stated in the Answer. 637 638

15. None of the subsidiary company defendants as a subsidiary company of one or more of the other defendants is entitled to apply for exemption from the provisions of said Act and no such exemption has been granted to them or any of them by order of the Commission. Nor has any of their holding companies been granted exemption except that by Rule 3 A-2 adopted by said Commission, temporary exemption was granted to a class of companies of which defendant The Washington Water Power Company is one, and by virtue of said rule defendants Spokane Central Heating Company and Spokane United Railways are temporarily exempted from the provisions of the Act *as subsidiaries of The Washington Water Power Company.* The exemption of defendant The Washington Water Power Company is a temporary exemption existing in the sole discretion of the Commission and defendants Spokane Central Heating Company and Spokane United Railways have no means of knowing whether said exemption will continue after 639

February 2, 1936. Moreover, if this Court should
640 order defendant Electric Bond and Share Company, or defendant American Power & Light Company to register under the Act, the exemption of The Washington Water Power Company, even if continued, would be of no avail to defendants Spokane Central Heating Company and Spokane United Railways since they would be and become fully subject to the jurisdiction of the Commission *as subsidiary companies of defendants Electric Bond and Share Company and American Power & Light Company.*

641 16. If the Court should order the defendants which are holding companies of the subsidiary company defendants to register under Section 5 of the Act, each of the subsidiary company defendants would be and become, as hereinabove alleged, fully subject to the jurisdiction of the Securities and Exchange Commission, its orders, rules and regulations. Immediately upon said registration and in consequence thereof, it would be and become unlawful by the terms of the Act for any of the subsidiary company defendants, without the prior approval of the Securities and Exchange Commission,
642 or in contravention of any rule, regulation or order from time to time by it deemed necessary or appropriate, to do any of the things enumerated in the second paragraph of Paragraph 46 of the Answer, except such things as are included within subsection (6) of said paragraph. Each of the subsidiary company defendants would likewise be subject to regulation by the Commission in respect of those matters referred to in the third and fourth paragraphs of Paragraph 46 of the Answer, which are

therein stated to be applicable to subsidiary companies of registered holding companies. 643

If the said defendant holding companies are ordered by this Court to register under Section 5 of the Act, the subsidiary company defendants will likewise be subject to the provisions of Section 26 (b) thereof, set out in Paragraph 43 of the Answer, and that portion of the penalty provision of Section 29, likewise set out in Paragraph 43 of the Answer, which is applicable to subsidiary companies of registered holding companies.

17. The subsidiary company defendants adopt, upon information and belief, all the admissions, denials and allegations contained in the Answer and make said Answer and the allegations of this bill their answer, counterclaim and cross-bill to plaintiff's Amended and Supplemental Bill of Complaint. 644

WHEREFORE the above named subsidiary company defendants pray for the relief requested in the Answer counterclaim and cross-bill of the other defendants herein, to wit; that the Amended and Supplemental Bill of Complaint be dismissed and that said Holding Company Act be declared unconstitutional, null and void, and that the plaintiff and the cross-defendants be restrained and enjoined from enforcing the same; and further pray that in the event that any other defendant, which is as to these subsidiary company defendants a holding company, be required to register under said Act, the rights, liabilities and duties of these subsidiary company defendants consequent upon such registration be decreed and determined. 645

And for such other and further relief as to the
646 Court may seem meet.

SIMPSON THACHER & BARTLETT,
120 Broadway,
New York, N. Y.,
Solicitors for Above-named Intervenors and Subsidiary Company Defendants.

THOMAS D. THACHER,
JOHN F. MACLANE,
DOUGLAS A. CALKINS,
647 Of Counsel.

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Stipulation Extending Time to Reply

(Title of Court and Cause)

649

It is hereby stipulated and agreed by and between the parties hereto, by their respective solicitors, that the time within which the plaintiff and cross-defendants may file their reply to the counterclaim and cross-bill of the defendants and intervening defendants may be extended for twenty days from and after February 8, 1936.

Dated: February 6, 1936.

JOHN J. BURNS,
ROBERT H. JACKSON,
Solicitors for Plaintiff, The Securities and Exchange Commission.

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SIMPSON THACHER & BARTLETT,
Solicitors for all Defendants and Intervening Defendants.

HOMER S. CUMMINGS,
Solicitor for Cross-Defendants Homer S. Cummings, Attorney General of the United States and James A. Farley, Postmaster General of the United States.

651

JOHN J. BURNS,
ROBERT H. JACKSON,
Solicitors for Cross-Defendants, James M. Landis, Robert E. Healy, George C. Matthews and James D. Ross, members of and constituting the Securities and Exchange Commission.

Stipulation Extending Time to Reply

(Title of Court and Cause)

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It is hereby stipulated and agreed by and between the parties hereto, by their respective solicitors, that the time within which the plaintiff and cross-defendants may file their reply to the counterclaim and cross-bill of the defendants and intervening defendants may be extended for fifteen days from and after February 28, 1936.

Dated: February 25, 1936.

JOHN J. BURNS,
653 ROBERT H. JACKSON,
Solicitors for Plaintiff,
The Securities and Exchange Commission.

SIMPSON, THACHER & BARTLETT,
Solicitors for all Defendants and Intervening Defendants.

HOMER S. CUMMINGS,
Solicitor for Cross-Defendants Homer S. Cummings, Attorney General of the United States and
654 James A. Farley, Postmaster General of the United States.

JOHN J. BURNS,
ROBERT H. JACKSON,
Solicitors for Cross-Defendants, James M. Landis, Robert E. Healy, George C. Matthews and James D. Ross, members of and constituting the Securities and Exchange Commission.

REPLY OF PLAINTIFF AND CROSS-DEFENDANTS TO THE COUNTERCLAIM AND CROSS-BILL OF THE DEFENDANTS AND INTERVENING DEFENDANTS.

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(Title of Court and Cause)

For the purposes of this reply, and not otherwise, and reserving all objections and exceptions in point of law which might be asserted against the counterclaim and cross-bill of the defendants and intervening defendants by motion to dismiss, motion to strike or otherwise, the plaintiff, Securities and Exchange Commission, and the cross-defendants, Homer S. Cummings, James A. Farley, James M. Landis, Robert E. Healy, George C. Mathews and James D. Ross, admit all allegations of fact in said counterclaim and cross-bill (being paragraphs 24 to 51, inclusive, of the answer of said defendants and intervening defendants to the amended and supplemental bill of complaint) except such allegations as are hereinafter specially denied or explained, subject to the qualifications and limitations hereinafter stated. In the following paragraphs of this reply, the references are to the paragraph and page of the counterclaim and cross-bill containing the allegations which are denied or explained in that paragraph of the reply. Unless the context otherwise requires, the term "defendants", when used herein, includes the original defendants and the intervening defendants named in the caption hereof.

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1. Plaintiff alleges that the counterclaim and cross-bill should be dismissed as to it for the reason

658 that it is solely an administrative arm and agency of the United States of America; that it has not consented, and has no authority to consent, to be sued; and that the counterclaim and cross-bill, insofar as it seeks affirmative relief against the plaintiff, is a suit against the United States of America, without its consent, which this Court is without jurisdiction to entertain.

659 2. Plaintiff and cross-defendants allege that, insofar as the counterclaim and cross-bill is more than a defense to the amended and supplemental bill of complaint and seeks affirmative relief and a declaratory judgment against plaintiff and cross-defendants, the counterclaim and cross-bill should be dismissed in that

660 (a) The counterclaim and cross-bill is in substance and effect a suit against the United States without its consent, which this Court is without jurisdiction to entertain and the sole purpose of such counterclaim and cross-bill is to obtain an advisory opinion declaring alleged rights and obligations of the defendants against the United States unrelated to any actual or concrete controversy with the plaintiff or cross-defendants.

(b) The counterclaim and cross-bill presents no existing case or controversy between the plaintiff or the cross-defendants or any of them, on the one hand, and the defendants or any of them, on the other hand, and in the absence of a case or

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controversy, this Court is without jurisdiction to entertain the counterclaim and cross-bill, the purpose of which is to obtain an advisory opinion declaring alleged rights and obligations of the defendants with respect to the Act *in abstracto* and is not to resolve any actual or existing case or controversy between any of the defendants and the plaintiff or any of the cross-defendants.

(c) The counterclaim and cross-bill does not show, nor is it a fact, that any damage, irreparable or otherwise, to the defendants or any of them has been caused by any action or threat of action of the plaintiff or any of the cross-defendants.

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As bearing upon the aforesaid grounds for the dismissal of such counterclaim and cross-bill, plaintiff and cross-defendants allege:

(i) Insofar as the defendants or any of them are alleged to be affected by the Act as non-registered holding companies by reason of the provisions of Section 4, Section 26 and Section 29, the only provisions of the Act affecting or alleged to affect the defendants as non-registered companies, the determination of this Court of their liability or non-liability to register in passing upon the issues raised by the bill of complaint, will necessarily dispose of all questions which are attempted to be raised by the counterclaim and cross-bill. So far therefore as the defendants complain of the effect of the Act upon them as non-registered holding companies or subsidiaries thereof there is no

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664 want of a prompt or adequate remedy because the plaintiff by its bill of complaint in this very proceeding has already moved to resolve such issues and to cause to be determined the liability of the defendants to register. The determination by this Court of the issues raised in the amended and supplemental bill of complaint herein will necessarily dispose of all such questions and will be res adjudicata as between the parties in respect thereto.

665 (ii) The provisions of Sections 4 and 5 of the Act are distinct from and clearly separable from the other provisions of the Act, and Section 32 of the Act expressly so provides. The defendants who are required to register with the Commission pursuant to the provisions of Sections 4 and 5 of the Act may do so without waiving or impairing any legal or constitutional right which they might otherwise assert, and the rules and regulations of the Commission promulgated October 9, 1935, as amended November 22, 1935, expressly
666 so provide, as is more fully set forth in Exhibit I attached hereto. Unless and until certain of the defendants (to wit, Electric Bond and Share Company, American Gas and Electric Company, American Power & Light Company, National Power & Light Company, Electric Power & Light Corporation, United Gas Corporation, Power Securities Corporation, Idaho Power Company, Utah Power & Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Mon-

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tana Power Company, Nebraska Power Company, Pacific Power & Light Company, Lehigh Power Securities Corporation, the only defendants not exempted under Section 3(a) from registration as required by the Act) register under the Act, none of the provisions of the Act relating or applicable to registered holding companies or to subsidiary companies of registered holding companies will be applicable to any of the defendants. Neither the planitiff nor any of the cross-defendants has, or has asserted, any power or authority under the 668
Act to compel any of the defendants to observe or comply with or to impose or institute proceedings for the imposition of any penalties for their failure to comply with, any of the provisions of the Act applicable by their terms to registered holding companies or subsidiary companies thereof. When the obligation of the defendants to register has been determined, the application of the Act to such companies, and their subsidiaries will depend upon specific facts concerning security issues, acquisitions, intra-system service and other transactions in respect to which the Commission's rule- 669
making power and administrative judgment must first be applied and with respect to which the counterclaim and cross-bill contains no concrete allegations of fact. What course the defendants will follow and what specific acts they will perform, if directed by this Court to register, are wholly problematic and conjectural, and have not been alleged and cannot be determined sufficiently concretely to provide a proper test of the

670 validity of any provision of the Act in its application to a registered holding company. Plaintiff and cross-defendants can neither affirm nor deny that any duty imposed upon any of them by the Act will affect the defendants when none of them has acted, or been called upon to act, in any manner prescribed or authorized by the Act in relation to the affairs of the defendants or any of them.

671 (iii) Whereas the Act provides its own machinery for administration and enforcement, and neither the plaintiff nor the cross-defendants have authority or color of authority to administer or enforce the Act except as therein provided,

(A) The cross-defendant, the Attorney General, has no authority under the Act to institute civil proceedings and has no authority to institute criminal proceedings before evidence of a violation of the Act is transmitted to him by the plaintiff. The Attorney General has expressly disclaimed
672 any intention of bringing criminal proceedings for the violation of the Act before its validity has been judicially determined by the Supreme Court, as is more fully set forth in Exhibits II and III attached hereto.

(B) The cross-defednant, the Postmaster General, has no authority under the Act to enforce its provisions civilly or criminally or by denying to violators thereof the use of the mails. The Post-

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master General has asserted no authority under the Act and has expressly disclaimed any intention of taking any action, at least before the validity of the Act is judicially determined by the Supreme Court, as is more fully set forth in Exhibit IV attached hereto.

(C) The individual cross-defendants, members of the Securities and Exchange Commission, as individuals, have no power or authority, and have asserted none, to bring civil or criminal proceedings to enforce the Act.

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(D) The plaintiff, Securities and Exchange Commission, is authorized under Section 18 to investigate violations of the Act and to bring civil proceedings to enjoint such violations and to enforce compliance with the Act. The Act expressly and exclusively vests such authority in the Commission. The Commission is also given authority under Section 18 to transmit evidence of violations of the Act to the Attorney General, who, upon the receipt of such evidence, is authorized, in his discretion, to institute the appropriate criminal proceedings. The Commission has expressly announced that for the immedate future and until further notice, it does not intend to make any recommendation or request upon the Department of Justice for the institution of criminal proceedings, as is more fully set forth in Exhibit V. The Commission has authorized the bringing of this civil suit to compel compliance with the provisions

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676 of Sections 4 and 5 of the Act by such of the defendants as are not exempt therefrom; otherwise the Commission has not authorized, and does not presently contemplate the bringing of any other or further proceedings against any of the defendants; nor has the Commission been requested by the defendants, or any of them, to authorize or approve any act or thing for which the Commission's authority or approval is required under the Act.

677 Therefore, plaintiff and the cross-defendants allege that none of the cross-defendants has at the present time any authority to bring, nor have any of the cross-defendants threatened to bring, proceedings against any of the defendants for the violation of any provision of the Act. The plaintiff and cross-defendants allege that the plaintiff has no authority, and has not threatened, to bring any proceeding against any of the defendants for any violation of the Act except a civil proceeding against certain of the defendants for failure to comply with the provisions of Sections 4 and 5.

678 Plaintiff and cross-defendants accordingly deny that there has arisen between them, or any of them, and the defendants, or any of them, any controversy with respect to the authority of the plaintiff or the cross-defendants to prohibit, control, regulate or manage the business, affairs or acts of the defendants, or any of them, except to the limited extent that the plaintiff asserts and the defendants deny that the defendants (excluding defendants Appalachian Electric Power Company,

Reply of Plaintiff and Cross Defendants to the Counterclaim and Cross Bill of the Defendants and Intervening Defendants

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The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, The Washington Water Power Company, Pennsylvania Power & Light Company and Easton Consolidated Electric Company which are exempted from registration under Section 3(a) of the Act) may be enjoined by a decree of this Court in this cause from violating any of the provisions of Section 4(a) of the Act and may be required to register pursuant to Section 5 of the Act as prayed by the plaintiff's amended and supplemental bill of complaint.

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3. *Par. 25, Pp. 27-28.* Plaintiff and cross-defendants deny that they, or any of them, have threatened or are threatening to subject the defendants, or any of them, to any prohibitions, liabilities or penalties under the Act except as heretofore stated. Plaintiff and cross-defendants deny that there has arisen between them, or any of them, and the defendants, or any of them, a controversy with respect to the authority of the plaintiff and the cross-defendants to prohibit, control, regulate or manage the business, affairs or acts of the defendants, or any of them, except to the limited extent that plaintiff asserts and defendants deny that the defendants, other than those defendants which are exempted from registration under Section 3(a) of the Act, may be enjoined by a decree of this Court in this cause from violating any of the provisions of Section 4(a) of the Act and may be required to register pursuant to Section 5 of the Act as prayed by plaintiff's amended and supplemental bill of complaint.

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Reply of Plaintiff and Cross Defendants to the Counterclaim and Cross Bill of the Defendants and Intervening Defendants

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4. *Par. 26, P. 28.* Plaintiff and cross-defendants deny that the alleged cause of action set forth in the counterclaim and cross-bill of the defendants is in the equity jurisdiction of this Court or that there is any matter in actual controversy, exceeding or not exceeding the sum or value of $3,000, and deny that such alleged cause of action presents a case of actual controversy involving civil or property rights over which this Court has jurisdiction under Section 274 (d) of the Judicial Code or otherwise. More specifically plaintiff and cross-
683 defendants deny that there is any case or controversy between them, or any of them, and the defendants, or any of them, other than that described and limited in plaintiff's amended and supplemental bill of complaint, and deny that Section 274(d) of the Judicial Code authorizes a declaration of rights as against the plaintiff, an arm and agency of the United States of America.

5. *Par. 28, Pp. 28-29.* Plaintiff and cross defendants are without knowledge as to the amount
684 which the defendant Bond and Share has invested in the securities of the holding company defendants or of operating public utility subsidiary companies, and, therefore, neither admit nor deny that such investment exceeds the sum of $200,000,000, but demand strict proof thereof.

6. *Par. 29. Pp. 29-30.* Plaintiff and cross-defendants allege that the plaintiff was informed by the Chairman of the Board of Directors of the defend-

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ant Electric Bond and Share Company prior to December 1, 1935, that American & Foreign Power Company would apply for an exemption from the Act pursuant to Section 3(a) thereof, and that said American & Foreign Power Company has applied to the plaintiff for such exemption.

Plaintiff and cross-defendants are without knowledge as to the investments of defendant Bond and Share in the securities of other public utility holding companies or the arrangement or relation of defendant Bond and Share with such companies, and, if material, demand strict proof thereof.

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7. *Par. 30. P. 30.* Plaintiff and cross-defendants allege that, prior to the organization of Ebasco Services Incorporated, Bond and Share rendered financial services to American Gas and to its subsidiary companies, as more fully appears from the amended and supplemental bill of complaint filed herein. Plaintiff and cross-defendants are without knowledge whether subsequent to the organization of Ebasco Services Incorporated it has rendered to American Gas and its subsidiary companies the financial services theretofore rendered by Bond and Share, and, therefore, neither admit nor deny that Ebasco Services Incorporated renders no services to American Gas and its subsidiaries, but demand strict proof thereof.

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8. *Pars. 32 to 36. Pp. 31 to 42.* Plaintiff and cross-defendants admit the allegations of said paragraphs with respect to the percentages of voting securities owned by each of the defendants in other

688 defendants and in electric and gas utility companies. Plaintiff and cross-defendants, being without knowledge, neither admit nor deny the allegations of said paragraphs which describe the businesses of the respective electric and gas utility companies therein mentioned, the states in which each of such companies generates or produces and distributes, or from which it receives or to which it transmits electric energy and gas, but demand strict proof thereof. Plaintiff and cross-defendants, being without knowledge, neither admit nor
689 deny the statements contained in Exhibits I, II, III, IV, and V, referred to in said paragraphs, but demand strict proof thereof. Plaintiff and cross-defendants, being without knowledge, neither admit nor deny the allegations of each of said paragraphs that (with the exceptions therein stated) the electric properties of the companies mentioned therein are not capable of physical interconnection with the properties of other companies mentioned in the same paragraph into an integrated public utility system, and deny the materiality of such allega-
690 tions, but, if material, demand strict proof thereof.

9. *Par. 37. P. 42.* Plaintiff and the cross-defendants being without knowledge as to the amounts invested by the holding company defendants in the securities of their subsidiary companies, neither admit nor deny the amounts alleged to be invested in such companies, and demand strict proof of the amounts of such investments and the nature of and circumstances attendant upon the acquisition of such investments. Plaintiff and the cross-defend-

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ants allege that such investments primarily represent the acquisition, directly or indirectly, of interests in public utilities already built and that a very small portion of such investments went to finance the building or extension of public utilities.

10. *Par. 38. Pp. 42-44.* Plaintiff and cross-defendants admit that defendant Bond and Share maintained a service organization which rendered certain services to all or substantially all of the public-utility operating subsidiary companies of the holding company defendants pursuant to contracts and arrangements between Bond and Share and such companies, and allege further that Bond and Share entered into service contracts and arrangements with all or substantially all of the defendant holding companies. Plaintiff and cross-defendants deny that such service organization was maintained for the benefit of the public utility operating subsidiary companies served or that the services rendered were services which could be most advantageously conducted by a central organization.

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Plaintiff and cross-defendants are without knowledge as to the action taken by Bond and Share subsequent to the passage of the Act and prior to the filing of the original bill of complaint herein, in transferring its service organization and in assigning such contracts for services as it did not purport to cancel, to Ebasco Services Incorporated and is without knowledge of any substantial change made by defendant Bond and Share in carrying out

694 its service contracts with its subsidiary holding and operating companies, but demands strict proof of all the allegations as to the origin, character and activities of Ebasco Services Incorporated, and of the cancellation of the contracts for and the termination of services to the holding company defendants.

Plaintiff and cross-defendants deny that the services performed by Ebasco Services Incorporated and described in Paragraph 38 do not constitute interstate commerce, but allege that Ebasco Services
695 Incorporated is engaged in business in interstate commerce and in activities directly affecting interstate commerce in the rendition of such services. Plaintiff and cross-defendants deny that the business of the Purchasing Department of Ebasco Services Incorporated is a minor and separable part of the total services performed by it, but allege, on the contrary, that such services constitute a substantial and inseparable part of the services performed by said Ebasco Services Incorporated.

Plaintiff and cross-defendants admit that service
696 fees may, and allege that they do, enter into the rates locally and otherwise charged for public utility services rendered by public utility companies, but deny that they are subject to the jurisdiction of the state authorities except indirectly and in a limited degree by reason of the state authorities' jurisdiction over rates. Plaintiff and cross-defendants allege that neither the service fees themselves nor the right of the operating company to pay and of the holding company and its service subsidiary to re-

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ceive such fees are subject to the jurisdiction of the state authorities. Plaintiff and cross-defendants deny that such fees have no relation to the generation or transmission of electric energy or gas across state lines or otherwise.

11. *Par. 39. Pp. 45-47.* Plaintiff and cross-defendants admit that Bond and Share owns the percentages of voting securities of the holding company defendants alleged in paragraph 39. Plaintiff and cross-defendants allege that the influence and control which Bond and Share exercises over said companies is not solely the control inherent in such stock ownership, but that by virtue of the means and devices more fully alleged in the amended and suplemental bill of complaint herein, said defendant fully dominates and controls the business and affairs of the holding company defendants. Plaintiff and cross-defendants deny that Bond and Share is not engaged in commerce among the several states or that its sole corporate business is the ownership of securities and investments and the conduct of matters incidental thereto, but allege that by reason of the matters and things alleged in the amended and supplemental bill of complaint herein, Bond and Share is engaged in interstate commerce, and in activities directly affecting interstate commerce.

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Plaintiff and cross-defendants are without knowledge whether at the present time there are no directors, officers or employees common to defendant Bond and Share or Ebasco Services Incorporated and the other defendants or their subsidiary com-

700 panies, except as alleged in paragraph 39, but allege that for many years last past and until sometime subsequent to the enactment of the Holding Company Act, many of the officers and directors of Bond and Share were also officers or directors of the other defendants and their subsidiary companies and that subsequent to the enactment of the Act certain changes in the officers and directors of the defendants were made at Bond and Share's request and direction and that such changes in no manner affected the control of Bond and Share over such
701 defendant companies, but were effected by Bond and Share by virtue of such control.

Plaintiff and cross-defendants deny that American Company, Electric Company, National Company, United Company, Power Securities Corporation, and Lehigh Company are not engaged in commerce among the several states, but allege that, as more fully appears from the allegations of the amended and supplemental bill of complaint herein, said defendants are engaged in such commerce and in activities directly affecting such commerce.
702 Plaintiff and cross-defendants deny that said defendants use the mails and other facilities of commerce only incidently in furtherance of their respective businesses, but allege that the use of the mails and other instrumentalities of interstate commerce is an indispensable, substantial and important part of the conduct of the businesses of said defendants. Plaintiff and cross-defendants deny that the operating companies subsidiary to said holding companies are engaged primarily in distributing electricity or gas solely within a single

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state, but allege that, as more fully appears from the amended and supplemental bill of complaint, the receipt or transmission of electric energy or gas in or so as directly to affect interstate commerce forms a substantial and inseparable part of the business of all or substantially all of said operating companies. Plaintiff and cross-defendants are without knowledge whether at the present time any of the officers, directors or employees of any of the subsidiary companies of the holding company defendants referred to on page 46 of the counterclaim and cross-bill are officers, directors or employees of said holding company defendants, but allege that, as more fully set out in the amended and supplemental bill of complaint, for many years last past and until some time subsequent to the enactment of the Holding Company Act many of the officers and directors of each of said holding companies were also officers and directors of the subsidiary operating companies of such holding companies, and that the changes in the officers and directors of such companies were made subsequent to the enactment of the Act at the request and direction of Bond and Share, and that such changes in no manner affected the control of Bond and Share and its intermediate holding companies over such subsidiary operating companies, but were effected by Bond and Share by virtue of such control. Plaintiff and cross-defendants deny that the operations of each of said subsidiary companies are conducted separately or are distinct from the operations of the holding company defendants, but allege

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706 that all of such subsidiary operating companies are controlled and operated through the defendant holding companies as component parts of a single system. Plaintiff and cross-defendants allege that Easton Consolidated Electric Company is exempted from registration under Section 3(a) of the Act and, if material, deny that it transacts no business in interstate commerce.

Plaintiff and cross-defendants admit that American Gas furnishes to its subsidiary operating utility companies managerial, financial, purchasing, and
707 other services, and that various officers and directors of American Gas also act as officers and directors of its public utility subsidiary companies. Plaintiff and cross-defendants deny that the local operating organizations of subsidiary companies of American Gas are separate and distinct from those of American Gas, but allege that American Gas dominates, directs and controls the conduct of the business of each of its operating subsidiary companies. Plaintiff and cross-defendants deny that defendant American Gas is not engaged in commerce among the
708 several states, but allege, as more fully appears from the amended and supplemental bill of complaint filed herein, that American Gas is engaged in such commerce and in activities directly affecting such commerce.

12. *Par. 40. Pp. 47-48.* Plaintiff and cross-defendants deny that the public utility companies in the Electric Bond and Share System are engaged primarily in the generation and distribution of electric energy or the production and distribution

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of gas within a single state, but allege that a substantial portion of the business of all or substantially all of such companies consists in the generation or production of electric energy or gas which is transmitted across state lines, the transmission of electric energy or gas to or across state lines or the receipt of electric energy or gas generated or produced in a state other than the state of its receipt. Plaintiff and cross-defendants deny that the generation of electric energy or the production of gas for transmission across state lines, and the 710
distribution thereof to the public within the states to which such electric energy or gas is distributed, is not or does not directly affect commerce among the states and denies that such generation, production and transmission is exclusively within the jurisdiction and control of the states and the regulatory authorities thereof within which such energy or gas is generated, produced or distributed. Plaintiff and cross-defendants deny that those companies which transmit electric energy or gas across state boundaries do so ordinarily or primarily for distribution at retail to customers of such companies, 711
but allege that a substantial part of the business of the operating subsidiary companies consists in transmitting or taking part in the transmission of electric energy to or across state boundaries for sale at wholesale within or at the border of a state other than the state in which such energy is generated. Plaintiff and cross-defendants deny that the transmission of electric energy or gas across state boundaries for ultimate sale or distribution at retail

712 does not constitute interstate commerce, and deny that the federal government has jurisdiction to regulate such transactions only to the extent that such transactions impair the safety, health or morals of any person. Plaintiff and cross-defendants deny that sales of electric energy or gas across state boundaries are a minor part of the business done by each or all or substantially all of said public utility companies or that such business comprises a business separable from the intrastate business of said companies and deny that all or substantially 713 all of said companies are doing a predominantly intrastate business.

13. *Par. 41. Pp. 48-49.* Plaintiff and cross-defendants are without knowledge as to whether any of the companies mentioned in paragraphs 32 to 36 of the counterclaim and cross-bill, in addition to the companies specifically mentioned in paragraph 41 are entitled to exemption or to claim exemption as a subsidiary company under the terms of Section 2(a) (8) and Section 3(b) of said Act 714 or under any other section thereof, but deny that said allegation is susceptible of proof since the right of any of said companies to such exemption depends upon an administrative determination by the plaintiff after notice and hearing, as required by the Act. Plaintiffs and cross-defendants deny that the exemption from the Act as holding companies of the defendants, The Washington Water Power Company, Pennsylvania Power & Light Company, Easton Consolidated Electric Company,

Reply of Plaintiff and Cross Defendants to the Counterclaim and Cross Bill of the Defendants and Intervening Defendants

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Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company and Atlantic City Electric Company is temporary, and deny that such exemption exists and will continue in the sole discretion of the plaintiff. As more fully appears from Exhibit A attached to plaintiff's amended and supplemental bill of complaint herein, all holding companies which are predominantly intrastate in character and carry on their business substantially in a single state in which such holding company and every subsidiary 716
public utility company thereof are organized (which is true of the defendants Pennsylvania Power & Light Company, Easton Consolidated Electric Company, The Scranton Electric Company, and Atlantic City Electric Company) have been exempted by the Commission for an indefinite period pursuant to Section 3(a) (1) of the Act which makes it mandatory upon the Commission to exempt such companies unless and except insofar as the Commission finds the exemption detrimental to the public interest or the interest of investors or consumers as the same is affected by such companies engaging 717
in interstate commerce or in activities which directly affect or burden interstate commerce (see Section 1(c) in accordance with which Congress therein expressly directed that all provisions of the Act should be interpreted). As more fully appears from the rule of the Commission attached hereto as Exhibit VI, all holding companies which are predominantly public-utility companies whose operations do not extend beyond the state in which

718 they are organized and states contiguous thereto (which is true of The Washington Water Power Company, Appalachian Electric Power Company and The Ohio Power Company) have been exempted by the Commission for an indefinite period pursuant to Section 3(a) (2) of the Act which makes such exemption mandatory upon the Commission except as stated in the preceeding sentence.

14. *Par. 42. P. 49.* Plaintiff and cross-defendants admit the use by Bond and Share and Ebasco
719 Services Incorporated of the United States mails and the facilities of commerce for various purposes, including the transportation of officers and employees and the transmission of matter affecting the business of said companies, but deny that such purposes are lawful to the extent that the mails or instrumentalities of interstate commerce are used in the performance of acts specified in Section 4(a) of the Act and therein declared to be unlawful for unregistered holding companies. Plaintiff and cross-defendants allege that such unlawful use of
720 the mails and of instrumentalities of interstate commerce is calculated to and does directly burden and affect interstate commerce and is detrimental to the interests of investors, consumers and the general public.

15. *Par. 43. Pp. 50-54.* Plaintiff and the cross-defendants admit that the provisions of Section 4 (a) and (b) and Section 26 and Section 29 of the Act are correctly set forth. Plaintiff and the cross-

Reply of Plaintiff and Cross Defendants to the Counterclaim and Cross Bill of the Defendants and Intervening Defendants

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defendants are without knowledge as to the application of Section 4 to the defendants except as alleged in the amended and supplemental bill filed herein, and demand strict proof of the allegations of the counterclaim and cross-bill in respect of the application of these sections to the several defendants. Plaintiff and cross-defendants allege that the allegation of the counterclaim and cross-bill that the "activities forbidden by paragraphs (3), (4) and (6) of said Section 4(a) are essential to the normal and ordinary conduct of the business of each of the defendants and the use, conservation and development of its properties" is inconsistent and irreconcilable with the defendants' answer (p. 7) to Par. VII, subpar. 3 and 4, p. 7 of the plaintiff's amended and supplemental bill herein.

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Plaintiff and cross-defendants are uninformed whether the performance of any of the existing contracts, relationships or practices of the defendants is in violation of any of the provisions of the Act, except to the extent that the performance of certain of such contracts, relationships and practices by certain of the defendants, while not registered as holding companies pursuant to Section 5 of the Act, is in violation of the Act, as more fully alleged in the amended and supplemental bill of complaint herein, and, if material, plaintiff and cross-defendants demand strict proof of the allegations of the counterclaim and cross-bill with respect thereto. Plaintiff and cross-defendants are without knowledge whether the performance of any existing contracts, relationships or practices will be in violation

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724 of any rules, regulations or orders of the plaintiff, when and if any such rules, regulations or orders are issued, and deny the materiality of the allegation of the counterclaim and cross-bill with respect thereto.

Plaintiff and cross-defendants are without knowledge whether the discharge of the duties of and the performance of contracts by the officers and employees of the defendants are in violation of any of the provisions of the Act, except to the extent that the discharge of certain of such duties and
725 the performance of certain of such contracts, so long as the defendants fail and refuse to register pursuant to Section 5 of the Act, are in violation of the Act, as more fully alleged in the amended and supplemental bill of complaint herein, and if material, plaintiff and cross-defendants demand strict proof of the allegations of the counterclaim and cross-bill with respect thereto. Plaintiff and cross-defendants deny that the officers and employees of the defendants are now discharging any duties or performing any contracts which will sub-
726 ject them to fines or imprisonment or penalties, and deny that such officers and employees are presently threatened with any liability to fine and imprisonment but allege that, as more fully appears from the allegations of paragraph 50 of the counterclaim and cross-bill, the Attorney General of the United States, who, upon receipt from the Commission of evidence with respect to the violation of the Act, may, in his discretion, institute appropriate criminal proceedings has publicly disclaimed his inten-

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tion of instituting criminal proceedings under the Act until such time as the Supreme Court of the United States shall determine the question of the constitutionality of said Act. Plaintiff and cross-defendants deny that said Holding Company Act or any acts of the plaintiff or of any officer or agent of the United States has had a deterring or demoralizing effect upon the personnel of the defendants or that their properties and business have been injured, irreparably or otherwise.

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Plaintiff and cross-defendants specifically deny that they or any of them have taken any action or have any authority to take any action under Section 26(b) of the Act or that any decree of this Court against them or any of them can relieve the defendants of any inconvenience or damage alleged to be sustained because of the existence of such provision of the Act. Plaintiff and cross-defendants specifically deny that they have threatened or contemplate taking any action under Section 29 against any of the defendants. Plaintiffs and cross-defendants specifically deny that any of the defendants are or will be exposed to any damage, irreparable or otherwise, by their failure to comply with the provisions of Section 4 of the Act by reason of any acts or threats of the plaintiff or cross-defendants or otherwise before the validity of such provision is adjudicated by the Supreme Court of the United States.

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16. *Par. 45, Pp. 56-57.* Plaintiff and cross-defendants admit that each of the defendants other

730 than the defendants exempted from the Act, would be required to expend moneys for the purpose of registering pursuant to Section 5 of the Act. Plaintiff and cross-defendants are without knowledge as to the exact amounts which each of the defendants would be required to expend for such purpose, but deny the allegations with respect to such amounts and allege the amounts stated to be grossly excessive, and if the amounts be material, demand strict proof thereof.

731 17. *Par. 46, Pp. 57-60.* Plaintiff and cross-defendants allege that the arguments and legal conclusions in this paragraph require no answer. Except in so far as the allegations correctly state the provisions of the Act, the plaintiff and cross-defendants deny the allegations. Plaintiff and cross-defendants deny that upon registration by the defendants, the entire business of each of the defendants would be subjected to complete or virtually unlimited control of the plaintiff or that the actual management and direction of the business and property of the defendants would be transferred from
732 the officers and directors thereof to the plaintiff, but admit that upon such registration, the defendants will become subject to such regulation as is authorized under the provisions of the Act. The unexempted defendants can avoid registration only by refraining from doing the acts or from assuming the status for which registration is required. Section 32 of the Act expressly provides that the provisions of the Act and its application to particular persons and circumstances shall be separable.

Reply of Plaintiff and Cross Defendants to the Counterclaim and Cross Bill of the Defendants and Intervening Defendants

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Registration does not as a matter of law require a registered company or its subsidiaries to waive any constitutional right and a registered company is free at any time to question the constitutionality of any provision of the Act or the legality of any rule or regulation of the Commission as actually applied to it or its affairs. But the allegations of the counterclaim and cross-bill of the defendants present no case of the actual application of any of the numerous provisions of the Act to any of the defendants. The incidence of the Act upon the 734
affairs of the defendants is at this time wholly problematic and conjectural. None of the numerous provisions of the Act with the exception of Sections 4, 26(b) and 29 have any application to the defendants until they register under the Act. Plaintiff and cross-defendants are informed and believe that defendants will not register under the Act until the decree of this Court ordering them to comply with the Act is confirmed by the Supreme Court of the United States. Plaintiff and cross-defendants are not informed what, if any, effect any particular provision of the the Act may, at 735
that time, have on the affairs of the defendants.

Plaintiff and cross-defendants deny that the judicial review of orders of the Commission provided by Section 24(a) of the Act is inadequate or incomplete. Plaintiff and cross-defendants further are without knowledge of the existence of any circumstances which would authorize the plaintiff to issue any order under the Act as to any of the defendants so long as neither they nor any company

736 of which they are a subsidiary are registered under the Act, except the rules exempting certain of the defendants, hereinabove referred to.

18. *Par. 47, Pp. 60-65.* Plaintiff and cross-defendants admit that it will be the duty of the Commission, as it may then be constituted, as soon as practicable after January 1, 1938, to require by order, after notice and opportunity for hearing, registered holding companies and their subsidiaries to comply with the requirements of Section 11(b)
737 of the Act. Plaintiff and cross-defendants allege that the Commission has at the present time no power or authority to require any company, registered or unregistered, to conform with such provisions. The Commission's authority to act was deliberately deferred and restricted by the Congress so that voluntary action might be taken by registered as well as non-registered companies before any mandatory order could be issued by the Commission. Plaintiff and cross-defendants deny that any provision of Section 11 is arbitrary or unreasonable, particularly in the light of the declared find-
738 ings of the Congress. Plaintiff and cross-defendants are without knowledge whether the respective operating utility companies of each of the defendant holding companies do or do not comprise a single integrated public utility system or such additional integrated public utility systems, as defined and permitted by the Act or what action, if any, it will become the duty of the Commission, as constituted after January 1, 1938, to take with re-

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spect to the defendant holding companies and subsidiary companies thereof, but allege that such action, if any, may not be taken by the Commission until after January 1, 1938, and then only after notice and opportunity for hearing to each of the defendant holding companies and its subsidiaries and upon findings made by the Commission as required by Section 11, and then only if prior to such date the defendant holding companies shall have registered as provided in the Act. It would be improper for the Commission to interpret and apply the Act to the defendants in advance of the time fixed by the Act and before the Commission has had an opportunity to examine and consider the facts as they may exist at the time when it will become the duty of the Commission to act. Plaintiff and cross-defendants deny that Section 11 is arbitrary or violates the Fifth Amendment or any other provision of the Constitution of the United States and deny that the enforcement thereof against the defendants' should they register, will require the forced sale or the sacrifice of the assets of Bond and Share or of Electric Company, National Company, American Company, Lehigh Company or Easton Consolidated Electric Company or of the respective investments of said companies in the stock of holding companies or public utility operating companies. Plaintiff and the cross-defendants deny that they have threatened, or have authority, to enforce the provisions of Section 11 against any of the defendants, which are neither registered holding companies nor subsidiary companies thereof or that Section 11(b) or Section 1(c) of the Act

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742 or any action of the plaintiff and cross-defendants thereunder constitute an immediate or present damage or injury, irreparable or otherwise to the defendants or any of them. The cross-defendants, the Attorney General and the Postmaster General, have not at this time or any time in the future any color of authority to enforce any order that the Commission, as constituted after January 1, 1938, might make under Section 11(b). Violations of such orders are not subject to the criminal provisions of Section 29 or any power that the Postmaster General
743 may have to exclude from the mails.

19. *Par. 48, Pp. 65-70.* Plaintiff and cross-defendants deny each of the arguments and conclusions contanied in said paragraph.

20. *Par. 49, P. 70.* Plaintiff and cross-defendants are without knowledge of the advice given to defendants by their counsel, but deny the materiality thereof. Plaintiff and cross-defendants deny that registration under the Act would or could possibly in any manner prejudice the legal rights of the de-
744 fendant, but allege that, by rules adopted by the plaintiff prior to the institution of this suit and attached hereto as Exhibit I, all the rights of the several defendants to assert the unconstitutionality of the Act or any provision thereof are expressly reserved to them notwithstanding their registration pursuant to Section 5. Plaintiff and cross-defendants allege that the contention that registration would waive or impair any constitutional or legal rights of the defendants is without color of merit.

Reply of Plaintiff and Cross Defendants to the Counterclaim and Cross Bill of the Defendants and Intervening Defendants

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Plaintiff and cross-defendants admit that defendants do not intend voluntarily to register or otherwise comply with the Act, but deny that, either by registration or otherwise, does the Act require them to turn over the management of their properties or business to the jurisdiction of the plaintiff. Plaintiff and cross-defendants allege that the defendants by failing to register have deprived themselves both as a matter of law or of equity of the right to ask this Court to determine the validity of any provision of the Act which could be applicable to them only as registered companies or subsidiary companies thereof, unless and until they become registered companies or subsidiary companies thereof.

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21. *Par. 50, Pp. 70-74.* Plaintiff and cross-defendants admit officially making, among others, the announcements quoted by the defendants to the effect that they would take no steps to penalize the defendants or anyone else for failure to comply with the Act until its constitutionality should be determined by the Supreme Court. Such announcements are set forth in full in Exhibits II-V attached hereto. Plaintiff and cross-defendants allege and affirm that they have no intention of departing from their announced policy.

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Plaintiff and cross-defendants deny that the existence of the provisions of the Act on the statute books constitutes an immediate, present or irreparable threat, damage or injury to defendants' property, or causes an immediate impairment of the

748 value of said property or of defendants' businesses or casts a cloud on defendants' title to such property or questions the validity of substantially every act and contract of the defendants and, if material, demand strict proof thereof. Plaintiff and cross-defendants allege that any possible threat, damage or injury which the defendants complain of is not due to the Act but to defendants' wilful refusal to register thereunder. Plaintiff and cross-defendants allege that even if the existence of the Act were causing any inconvenience, damage or injury
749 (which plaintiff and cross-defendants deny), such inconvenience, damage or injury is not occasioned by any act or threat by plaintiff or cross-defendants against the defendants or any of them.

Plaintiff and cross-defendants deny that under the color of authority of the Holding Company Act, or otherwise, they are combining or conspiring together to injure the defendants.

Plaintiff and cross-defendants admit that plaintiff will issue rules and regulations and orders as occasion arises under Section 5(b), but deny
750 that any such action will affect any of the defendants before they register under the Act, and deny that any rules, regulations, or orders issued by it will be arbitrary or unreasonable or call for an unnecessary number of schedules, appendices or other documents. Plaintiff and cross-defendants deny that plaintiff intends to take any other action under the Act in respect to registered companies or their subsidiaries which is arbitrary or unreasonable; deny that such action will affect the defendants as unregistered companies; deny that plaintiff

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has threatened or intends to transmit evidence to the Attorney General of the failure of the defendants to register under the Act or to request the Attorney General to institute criminal proceedings for the enforcement of any provision of the Act against the defendants or any other company before the constitutionality of the Act is adjudicated by the Supreme Court.

Plaintiff and cross-defendants deny that the Attorney General threatens or intends to institute criminal proceedings against the defendants or any of them, and deny that the Postmaster General intends or threatens to prevent the defendants from using the mails in the conduct of their business, but allege, on the contrary, that it is the intention of the Securities and Exchange Commission and the Attorney General and Postmaster General to institute no proceedings of any kind or nature whatsoever against the defendants or any of them or their officers, directors or employees to enforce the provisions of Section 4(a) of the Act or of any other section of the Act other than the proceeding instituted by the plaintiff herein, until such time as the Supreme Court of the United States shall have determined the constitutionality of said Act in this proceeding.

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22. *Par. 51, Pp. 74-80.* Plaintiff and cross-defendants deny that defendants are entitled to any affirmative relief in this proceeding, or that they will be damaged irreparably or otherwise if such affirmative relief is not granted. Plaintiff and cross-defendants deny that, if this Court does not

754 direct the defendants to register under the Act pursuant to the prayer of the amended and supplemental bill of complaint herein, plaintiff or the Attorney General or the Postmaster General will attempt to or will by law be entitled to enforce against said defendants any of the penalties imposed by said Act for violations thereof by unregistered holding companies.

Plaintiff and cross-defendants admit that if and when the defendants register under said Act, they may be required to expend moneys pursuant to
755 Section 5. Plaintiff and cross-defendants are without knowledge as to the exact amount of moneys which said defendants would be required to expend, bu deny the allegation of the counterclaim and cross-bill with respect to such amount, and allege the amount stated to be grossly excessive. Plaintiff and cross-defendants deny that the moneys so expended by the defendants will be wasted or dissipated, but allege that such information will serve useful purposes.

Plaintiff and cross-defendants admit that if and when defendants register pursuant to the Act, rules
756 and regulations may, as occasion arises, be issued by the plaintiff applicable to registered holding companies which may be applicable to the defendants if and when the defendants have occasion to do the acts and things coming within their scope and purview, but deny that any of the provisions of the Act are in violation of the Constitution of the United States and are without knowledge as to what regulations or orders, which may here-

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after be issued by the plaintiff and be applicable to the defendants, defendants will resist.

Plaintiff and cross-defendants deny that if the defendants register under the Act, the values of their property and business or of private funds invested in said defendants will be impaired or destroyed.

Plaintiff and cross-defendants admit that if and when Bond and Share registers under the Act, the provisions of Section 11 will become applicable in accordance with its terms to Bond and Share, but plaintiff and cross-defendants deny that any action may be taken by the plaintiff under Section 11(b) at the arbitrary will of the Commission at any time before or after January 1, 1938, and deny that the plaintiff has any authority to take any action under Section 11(b) before January 1, 1938, and are without knowledge at this time as to what action, if any, the Commission will be authorized or required to take against the defendants under Section 11 after January 1, 1938. Plaintiff and cross-defendants deny that the provisions of Section 11 and the alleged required acts of the plaintiff thereunder tend to destroy the value of Bond and Share's investment in the other defendants or make the financing of said companies and their subsidiaries or the conduct of their public utility business impossible or result in the destruction of the value of defendant Bond and Share's property and investment.

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Plaintiff and cross-defendants admit that if American Company, Electric Company and National Company register under said Act, the provi-

760 sions of Section 11 of the Act will become applicable in accordance with its terms to said defendants. Plaintiff and cross-defendants are presently without knowledge as to what action, if any, the Commission may be required or authorized to take pursuant to Section 11(b) of said Act after January 1, 1938, but deny that any such action will be taken at the arbitrary will of the Commission at any time before or after January 1, 1938, and deny that plaintiff has any authority to take any action under Section 11(b) before January 1, 1938.

761 Plaintiff and cross-defendants deny that the provisions of Section 11 or the action, if any, which may at some future date be required to be taken by the Commission as then constituted pursuant to the Act, destroy the value of said defendants' investments in their subsidiary companies, making the financing of said subsidiary companies or the conduct of their public utility business impossible or result in the destruction of the value of said defendants' respective property or investments.

762 Plaintiff and cross-defendants admit that if the defendants American Gas, United Gas Corporation, Power Securities Corporation, and Lehigh Power Securities Corporation, register under the Act the provisions of Section 11 in accordance with its terms will become applicable to such defendants, but deny that the action, if any, taken by the plaintiff pursuant to said Section 11 will be at the arbitrary will of the Commission at any time either before or after January 1, 1938, and deny that the plaintiff has any authority to take any action under Section 11(b) before January 1, 1938. Plain-

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tiff and cross-defendants deny that the Easton Consolidated Electric Company and those operating defendants which are exempted from registration under the Act will be directed to register, by this Court, or otherwise, and become subject, as registered companies, to the provisions of Section 11. Plaintiff and cross-defendants deny that the action, if any, which may at some future date be required to be taken by the Commission as then constituted pursuant to said section threatens or tends to destroy the investments of any of the defendants in their electric or gas utility properties or to injure or prevent the financing of said defendants or their subsidiary companies or the conduct of their public utility business or result in the depreciation or destruction of the value of their property or investment.

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Plaintiff and cross-defendants deny that the provisions of Sections 4, 11 and 13 of the Act, or any acts of plaintiff or cross-defendants thereunder, will immediately impair or progressively tend to destroy the management of defendants or the technical and service organizations of defendant American Gas or of Ebasco Services Incorporated, which is not a party to this proceeding. Plaintiff and cross-defendants are without knowledge of the composition of the staffs of said organizations or the efficiency of their services. Plaintiff and cross-defendants are without knowledge as to the extent to which the successful operations of defendants and their subsidiary companies depend upon said organizations. Plaintiff and cross-defendants deny

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766 that there is every or any reasonable probability that the staffs of such organization will not and cannot continue in the efficient performance of their duties.

Plaintiff and cross-defendants deny that there is any controversy between them or any of them and the defendants or any of them which immediately or irreparably or otherwise affects the right of the defendants to conduct, manage, conserve and control the disposition of their property. Plaintiff and cross-defendants deny that by reason of the 767 existence of the Act or any action taken or threatened by plaintiff or cross-defendants, the defendants are suffering or will suffer irreparable injury to their property or that such injury will constitute an irreparable loss for which they have no adequate remedy at law.

23. As a further and separate defense to the counterclaim and cross-bill, plaintiff and cross-defendants allege that the defendants do not seek equity with clean hands and are not entitled to affirmative relief from this Court.

768 When the Act was under consideration by the Committee on Interstate Commerce of the Senate and by the Committee on Interstate and Foreign Commerce of the House of Representatives the defendants appeared, through their representatives, and through The Committee of Utility Executives upon which they were represented, and opposed the enactment of the Act as introduced and in its final form, but, prior to its enactment, submitted a revision of the original draft of the Act

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proposing changes which they represented would leave the Act not unfair or unworkable or unconstitutional, and represented to Congress thereby and by other statements that the nature and character of the business usually transacted by utility holding companies was such that there existed some power in the federal government to regulate it or some part of it; that there was need for the exercise of such power of regulation; and that the device of registration was a reasonably appropriate means for the exercise of such power. Exhibit VII is a copy of the revision of the Act so submitted to the Congress.

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The allegations of the cross-bill and counterclaim which attack the registration provisions of the Act as unconstitutional, and seek to enjoin their enforcement, are contrary to and in conflict with the representations made to and the position taken by the defendants before the Committees of the Congress, and are wholly without equity. The prayer of the cross-bill and counterclaim, seeking affirmative relief from other provisions of the Act which are applicable only to registered holding companies and their subsidiaries, long in advance of any effort or occasion to enforce such provisions against the defendants, and while such provisions remain inapplicable to them by reason of their failure to comply with registration requirements, substantially the same as those proposed by them to the Congress, is likewise lacking in equity. A court of equity will not extend affirmative relief to the defendants before they comply with the registration provisions of the Act to which they assented.

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Reply of Plaintiff and Cross Defendants to the Counterclaim and Cross Bill of the Defendants and Intervening Defendants

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WHEREFORE, plaintiff and cross-defendants having made full and complete reply to the cross-bill and counterclaim of the defendants, pray that the same may be dismissed with costs.

JOHN J. BURNS,
ROBERT H. JACKSON,
Solicitors for Plaintiff,
The Securities and Exchange Commission.

773

HOMER S. CUMMINGS,
Solicitor for Cross-Defendants,
Homer S. Cummings, Attorney General of the United States, and James A. Farley, Postmaster General of the United States.

JOHN J. BURNS,
ROBERT H. JACKSON,
Solicitors for Cross-Defendants,
James M. Landis, Robert E.
774 Healy, George C. Mathews and James D. Ross, members of and constituting the Securities and Exchange Commission.

Reply of Plaintiff and Cross Defendants to the Counterclaim and Cross Bill of the Defendants and Intervening Defendants 775

EXHIBIT I, ANNEXED TO REPLY

This exhibit is identical with Exhibit 5 to the Stipulation of Facts.

EXHIBIT II, ANNEXED TO REPLY

This exhibit is identical with Exhibit 2 to the Stipulation of Facts. 776

EXHIBIT III, ANNEXED TO REPLY

This exhibit is identical with Exhibt 3 to the Stipulation of Facts.

EXHIBIT IV, ANNEXED TO REPLY

This exhibit is identical with Exhibit 4 to the Stipulation of Facts. 777

EXHIBIT V, ANNEXED TO REPLY

This exhibit is identical with Exhibit 6 to the Stipulation of Facts.

Reply of Plaintiff and Cross Defendants to the Counterclaim and Cross Bill of the Defendants and Intervening Defendants

778

EXHIBIT VI, ANNEXED TO REPLY

This exhibit is identical with Exhibit 1 to the Stipulation of Facts.

EXHIBIT VII, ANNEXED TO REPLY

This exhibit is identical with Exhibt 8 to the Stipulation of Facts.

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CLERK'S COPY.

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 636

ELECTRIC BOND AND SHARE COMPANY, AMERICAN GAS AND ELECTRIC COMPANY AND AMERICAN POWER & LIGHT COMPANY, ET AL., PETITIONERS,

vs.

SECURITIES AND EXCHANGE COMMISSION, HOMER S. CUMMINGS, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 14, 1937.

CERTIORARI GRANTED JANUARY 3, 1938.

INDEX

Subject	*Page*
PLEADINGS*	2-260
Subpoena	2
Order for Leave to File Amended and Supplemental Bill	4
Amended and Supplemental Complaint	5
Notice of Motion	65
Petition for Intervention of Appalachian Electric Co., et al	67
Stipulation	88
Order Bringing in Appalachian Electric Power Co., et al	90
Stipulation Extending Time to Answer	91
Stipulation Extending Time to Answer	92
Answer of Defendants and Intervening Defendants to the Amended and Supplemental Bill of Complaint	93
Stipulation as to Additional Parties	202
Order	205
Bill of Intervention	206
Stipulation Extending Time to Reply	217
Stipulation Extending Time to Reply	218
Reply of Plaintiff and Cross-Defendants to the Counter-Claim and Cross-Bill of the Defendants and Intervening Defendants	219
STIPULATION OF FACTS**	261-637
Article I. Scope of Stipulation, Identity of Parties and Definitions	261
1. Scope of Stipulation	261
2. Identity of Plaintiff and Cross-Defendants	262
3. Definitions	263
4. Identity of Defendants	264

* Volume I, Pages 1-260.
** Volumes II and III, Pages 261-439

Subject *Page*

Article II. Failure to Register Under, Exemptions From and Violations of the Act 268

5. Failure to Register under the Act.. 268
6. Exemption of Certain Defendants.. 269
7. Present Violations of the Act by Defendants 270

Article III. Enforcement of the Act by the Plaintiff and Cross-Defendants 271

8. The Attorney General 271
9. The Postmaster General 272
10. The Commission and the Members of the Commission 273
11. Enforcement After Final Decree... 274
12. Cost of Registration 275
13. Legislative Hearings on the Act.... 276

Article IV. Genesis and General Description of Bond and Share and Holding Defendants 278

14. 278

Article V. Financial Structures and Corporate Inter-Relationships of the Defendants and their Subsidiaries 283

15. Charts of Corporate Inter-Relationships 283
16. Bond and Share 283
17. American Gas 286
18. American Company 288
19. Electric Company 292
20. United Company 295
21. National Company 296

Subject *Page*

22. Investments of Defendants in Their Subsidiaries 299
22A. Charters of Bond and Share and Holding Defendants 300
23. Trading in Securities of the Bond and Share System 301
23A. Payment of Interest and Dividends 301
23B. Appreciation and Depreciation of Property and Investment Accounts 301

Article VI. Organization and History of American Company 302

24. Organization 302
25. Subsequent Acquisitions of Utility Properties 304
26. Physical Integration of Properties 306
27. Extent of System and Service..... 307

Article VII. Organization and History of Electric Company 309

28. Organization 309
29. Subsequent Acquisitions of Utility Properties 310
30. Physical Integration of Properties 312
31. Extent of System and Service..... 313

Article VIII. Organization and History of United Company 314

32. Organization 314
33. Subsequent Acquisitions of Utility Properties 316
34. Physical Integration of Properties 317
35. Extent of System and Service..... 318